South Australia

Return to Work Act 2014

An Act to provide for the recovery, return to work and support of workers in relation to work injuries; to repeal the *Workers Rehabilitation and Compensation Act 1986*; to make related amendments to the *Civil Liability Act 1934*, the *Judicial Administration (Auxiliary Appointments and Powers) Act 1988*, the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*, the *Supreme Court Act 1935*, the *WorkCover Corporation Act 1994*, the *Workers Rehabilitation and Compensation Act 1986* and the *Work Health and Safety Act 2012*; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Return to Work Act 2014*.

2—Commencement

(1) Subject to this section, this Act will come into operation on a day to be fixed by proclamation.

(2) Part 8 of Schedule 9 will be taken to have come into operation on 1 July 2013 immediately after the *Workers Rehabilitation and Compensation (Firefighters) Amendment Act 2013* is taken to have come into operation.

(3) Clause 28 of Schedule 9 will come into operation on 1 January 2015.

3—Objects of Act

(1) The object of this Act is to establish a scheme that supports workers who suffer injuries at work and that has as its primary objective to provide early intervention in respect of claims so as to ensure that action is taken to support workers—

(a) in realising the health benefits of work; and

(b) in recovering from injury; and

(c) in returning to work (including, if required, after retraining); and

(d) in being restored to the community when return to work is not possible.

(2) In connection with subsection (1), the other objectives that apply with respect to this Act are—

(a) to ensure that workers who suffer injuries at work receive high-quality service, are treated with dignity, and are supported financially; and

(b) to ensure that employers' costs are contained within reasonable limits so that the impact of work injuries on South Australian businesses is minimised; and

(c) to provide a reasonable balance between the interests of workers and the interests of employers; and

(d) to reduce the overall social and economic cost of work injuries to the State and to the community; and

(e) to support activities that are aimed at reducing the incidence of work injuries; and

(f) to reduce disputation when workers are injured at work by improving the quality of decision-making and by reducing adversarial contests to the greatest possible extent.

(3) A person exercising judicial, quasi-judicial or administrative powers must interpret this Act in the light of its objects and these objectives without bias towards the interests of employers on the one hand, or workers on the other.

(4) The Corporation, the worker and the employer from whose employment a work injury arises must seek to achieve an injured worker's return to work (taking into account the objects and requirements of this Act).

4—Interpretation

(1) In this Act, unless the contrary intention appears—

actuary means a Fellow or Accredited Member of the Institute of Actuaries of Australia;

Advisory Committee means the committee established under Part 11;

apprentice includes—

(a) a person undertaking training as a trainee in a trade, declared vocation or other occupation under a contract of training under the *Training and Skills Development Act 2008*; and

(b) a person undertaking training in a scheme approved by the Corporation for the purposes of this definition,

and ***apprenticeship*** has a corresponding meaning;

authorised officer means a person who is authorised by the Corporation to exercise the powers of an authorised officer under this Act;

average premium rate means the average rate for all premiums declared under Part 9 Division 4 in relation to a particular financial year when viewed as a percentage of remuneration expected by the Corporation to be paid by all employers (other than self-insured employers) during that financial year;

average weekly earnings, in relation to a worker, means the worker's average weekly earnings determined in accordance with section 5;

the board means the board of management of the Corporation;

business day means any day except Saturday, Sunday or a public holiday;

child, in relation to a deceased worker, includes a person in relation to whom the worker stood, at the date of death, *in loco parentis*;

close personal relationship means the relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis, but does not include—

(a) the relationship between a legally married couple; or

(b) a relationship where 1 of the persons provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind;

Note—

Two persons may live together as a couple on a genuine domestic basis whether or not a sexual relationship exists, or has ever existed, between them.

compensation means any monetary benefit payable under this Act (other than under Part 5);

consequential mental harm means mental harm that is a consequence of bodily injury to the person suffering the mental harm;

Consumer Price Index or ***CPI*** means the Consumer Price Index (All groups index for Adelaide) published by the Australian Bureau of Statistics;

contract of service means—

(a) a contract under which 1 person (the worker) is employed by another (the employer); or

(b) a contract, arrangement or understanding under which 1 person (the worker) works for another in prescribed work or work of a prescribed class; or

(c) a contract of apprenticeship; or

(d) a contract, arrangement or understanding under which a person (the worker)—

(i) receives on-the-job training in a trade or vocation from another (the employer); and

(ii) is during the period of that training remunerated by the employer;

Corporation means the *Return to Work Corporation of South Australia*;

corresponding law means a law—

(a) of the Commonwealth; or

(b) of a State (other than this State) or a Territory of the Commonwealth; or

(c) of another country,

that corresponds to this Act or that is prescribed by the regulations for the purposes of this definition;

current work capacity—see section 36;

damages means damages for injury or loss sustained by a worker in circumstances creating, independently of this Act, a legal liability in the worker's employer (or a person who is vicariously liable for the acts of the worker's employer), or another person, to pay damages to or in relation to—

(a) the worker; or

(b) if the injury results in the worker's death—a dependant of the deceased worker,

but does not include—

(c) a sum required or authorised to be paid under an award or industrial agreement; or

(d) a sum payable under a superannuation scheme or any life or other insurance policy; or

(e) any amount paid in respect of costs incurred in connection with legal proceedings; or

(f) damages of a class excluded from the ambit of this definition by the regulations;

dependant, in relation to a deceased worker, means a relative of the worker who, at the time of the worker's death—

(a) was wholly or partially dependent for the ordinary necessities of life on earnings of the worker; or

(b) would, but for the worker's injury, have been so dependent,

and includes a posthumous child of the worker; and ***dependent*** has a corresponding meaning;

designated weekly earnings means designated weekly earnings determined under section 39;

disease includes—

(a) any physical or mental ailment, disorder, defect or morbid condition, whether of sudden or gradual development; and

(b) any injury to which section 9 applies;

domestic partner—a person is the domestic partner of a worker if the person lives with the worker in a close personal relationship and—

(a) the person—

(i) has been so living with the worker continuously for the preceding period of 3 years; or

(ii) has during the preceding period of 4 years so lived with the worker for periods aggregating not less than 3 years; or

(iii) has been living with the worker for a substantial part of a period referred to in subparagraph (i) or (ii) and the Corporation considers that it is fair and reasonable that the person be regarded as the domestic partner of the worker for the purposes of this Act; or

(b) a child, of whom the worker and the person are the parents, has been born (whether or not the child is still living);

educational institution means—

(a) a secondary school; or

(b) a trade or technical school; or

(c) a college of advanced education, university or other institution at which tertiary education is provided; or

(d) any other educational or training institution approved by the Corporation for the purposes of this definition;

employer means—

(a) a person by whom a worker is employed under a contract of service, or for whom work is done by a worker under a contract of service (subject to any exclusion under subsection (7));

(b) in relation to persons of whom the Crown is, under Schedule 1, the presumptive employer—the Crown;

(c) in relation to persons of whom any other person is, by virtue of a provision of this Act, the presumptive employer—that other person,

and includes a former employer and the legal personal representative of a deceased employer;

employment includes—

(a) work done under a contract of service; and

(b) the work of a self-employed person to whom the Corporation has extended the protection of this Act; and

(c) the work of persons of whom the Crown is, under Schedule 1, the presumptive employer; and

(d) attendance by a worker at a place of pick-up;

evidentiary material means any document, object or substance of evidentiary value that is relevant to proceedings before the Tribunal and includes any document, object or substance that should, in the opinion of the Tribunal, be produced for the purpose of enabling the Tribunal to determine whether or not it has evidentiary value;

Federal minimum wage—see subsection (8);

foreign law means any law except a law of this State;

health practitioner means—

(a) a person who is registered under the *Health Practitioner Regulation National Law* (other than as a student) and is—

(i) a medical practitioner; or

(ii) a dentist; or

(iii) a psychologist; or

(iv) an optician; or

(v) a physiotherapist; or

(vi) a chiropractor; or

(vii) a podiatrist; or

(viii) an occupational therapist; or

(ix) an osteopath; or

(b) a speech pathologist who is registered by *The Speech Pathology Association of Australia Limited*; or

(c) a person of a class prescribed by the regulations for the purposes of this definition;

Impairment Assessment Guidelines means the guidelines published under section 22;

independent medical adviser means an independent medical adviser appointed under Part 8;

industrial association means—

(a) an association registered under the *Fair Work Act 1994*; or

(b) an organisation registered under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth; or

(c) the United Trades and Labor Council (trading as SA Unions); or

(d) the Australian Mines and Metals Association; or

(e) Self Insurers of South Australia Inc; or

(f) South Australian Employers' Chamber of Commerce and Industry Inc (trading as Business SA); or

(g) an association, society or body formed to represent, protect or further the interests of employers or employees;

industry includes any business or activity in which workers are employed;

injured worker—an injured worker is any worker who has suffered an injury (or, where the context admits, has died);

injury, in relation to a worker, means—

(a) any physical or mental injury including—

(i) loss, deterioration or impairment of a limb, organ or part of the body, or of a physical, mental or sensory faculty; or

(ii) a disease; or

(iii) disfigurement; or

(b) where the context admits—the death of the worker,

and includes an injury that is, or results from, the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior injury;

legal personal representative—see subsection (13);

local government corporation means—

(a) a council under the *Local Government Act 1999*; or

(b) the Local Government Association of South Australia; or

(c) any other body—

(i) established for local government purposes; and

(ii) prescribed for the purposes of this definition;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practice in the medical profession (other than as a student);

medical services means—

(a) attendance, examination or treatment by a health practitioner (including the obtaining of a certificate or report); or

(b) any diagnostic examination or test required for the purposes of treatment by a health practitioner; or

(c) any services of a class prescribed for the purposes of this definition;

mental harm means impairment of a person's mental condition;

motor accident damages means—

(a) damages to which Part 4 of the *Motor Vehicles Act 1959* applies; or

(b) damages to which the law of another State or a Territory of the Commonwealth that corresponds to Part 4 of the *Motor Vehicles Act 1959* applies;

no current work capacity—see section 36;

non-economic loss means—

(a) pain and suffering;

(b) loss of amenities of life;

(c) loss of expectation of life;

(d) disfigurement;

(e) any other loss or detriment of a non-economic nature;

notional weekly earnings in relation to a worker means—

(a) the worker's average weekly earnings; or

(b) where an adjustment has been made under this Act to take account of changes in levels of earnings, the value of money or remuneration (including under section 45, 46 or 60) or other relevant factors (or 1 or more of these)—the worker's average weekly earnings as so adjusted but not so as to exceed in any case twice State average weekly earnings;

officer of the Corporation includes an employee of the Corporation;

orphan child means a child whose natural or adoptive parents are dead and includes a child, 1 of whose natural or adoptive parents is dead and who has no reasonable prospect of being supported by the surviving natural or adoptive parent;

parent, in relation to a deceased worker, includes a person who stood *in loco parentis* to the worker at the time of the worker's death;

permanent impairment compensation means compensation for permanent impairment under Part 4 Division 6 or Division 7;

permanent impairment matter means any of the following:

(a) whether an impairment suffered by a worker is permanent;

(b) the extent to which a permanent impairment suffered by a worker is capable of being accurately assessed;

(c) the extent to which a permanent impairment suffered by a worker is attributable to a previous injury or a pre-existing condition;

(d) the degree of whole person impairment suffered by a worker;

place of employment means a place where a worker is required to carry out duties of employment and, if the place is a building, includes land within the external boundaries of the land on which the building is situated;

premises means—

(a) a building, structure or place (including an aircraft, ship or vehicle); or

(b) a part of premises;

prescribed allowance, in relation to the earnings of a worker, means any amount received by the worker from an employer by way of an allowance or benefit prescribed for the purposes of this definition;

President means the President of the Tribunal;

presidential member means a presidential member of the Tribunal;

psychiatric injury means pure mental harm;

pure mental harm means mental harm other than consequential mental harm;

recognised health practitioner means—

(a) a medical practitioner; or

(b) in relation to injuries of a particular kind—a health practitioner who is recognised by the Corporation (in a manner determined by the Corporation) as having specialised knowledge of, and experience in the treatment of, injuries of that kind;

recovery/return to work plan—see section 25;

recovery/return to work services—see section 24;

Registrar means the Registrar of the Tribunal;

relative, in relation to a deceased worker, means a spouse, domestic partner, parent, grandparent, step-parent, child, grandchild, stepchild, brother, sister, stepbrother, stepsister, half-brother or half-sister of the worker;

repealed Act means the *Workers Rehabilitation and Compensation Act 1986* repealed by this Act;

residence in relation to a worker includes a place—

(a) at which the worker resides in accordance with the terms of the worker's employment or at the request of the employer; or

(b) at which it is necessary or convenient for the worker to reside temporarily for the purposes of employment;

reviewable decision means a decision that is reviewable under section 97;

RTWSA premium order means a RTWSA premium order published under Part 9 Division 4 Subdivision 4;

RTWSA premium provisions means the RTWSA premium provisions published under Part 9 Division 4 Subdivision 2;

SACFS means the South Australian Country Fire Service;

SAMFS means the South Australian Metropolitan Fire Service;

self-employed worker means a person to whom the Corporation has extended the protection of this Act pursuant to section 175;

self-insured employer means an employer who is registered by the Corporation as a self-insured employer under Part 9 Division 1;

seriously injured worker—see Part 2 Division 4;

ship includes a boat, vessel or craft;

South Australian ship means a ship—

(a) that is registered in the State; or

(b) that is owned or under charter by the Crown; or

(c) that is owned or under charter by a body corporate or other person—

(i) whose principal office or place of business is in the State; or

(ii) whose principal office or place of business with respect to the control or management of the ship is in the State;

spouse—a person is the spouse of another if they are legally married;

the State includes the territorial waters of the State;

suitable employment, in relation to a worker, means employment in work for which the worker is currently suited, whether or not the work is available, having regard to the following:

(a) the nature of the worker's incapacity and previous employment;

(b) the worker's age, education, skills and work experience;

(c) the worker's place of residence;

(d) medical information relating to the worker that is reasonably available, including in any medical certificate or report;

(e) if any recovery/return to work services are being provided to or for the worker;

(f) the worker's recovery/return to work plan, if any;

Supreme Court means the Supreme Court of South Australia;

therapeutic appliance means—

(a) spectacles or contact lenses; or

(b) a hearing aid; or

(c) false teeth; or

(d) a prosthesis; or

(e) a crutch or wheelchair; or

(f) any other appliance or aid for reducing the extent of an injury or enabling a person to overcome in whole or part the effects of an injury;

trauma means an event, or series of events, out of which a work injury arises;

Tribunal means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*;

unrepresentative injury means an injury arising from an attendance mentioned in section 7(5) or a journey mentioned in section 7(8)(b);

week means any period of 7 consecutive days;

work injury means an injury that arises from employment under section 7;

worker means—

(a) a person by whom work is done under a contract of service (whether or not as an employee);

(b) a person who is a worker by virtue of Schedule 1;

(c) a self-employed worker,

and includes a former worker and the legal personal representative of a deceased worker;

working day in relation to a worker means a day on which the worker works or would, if not incapacitated for work, be normally required to work in the course of employment.

(2) A member of the crew of a fishing boat who is remunerated by a share in profits or gross receipts obtained by working the boat is not a worker for the purposes of this Act.

(3) If a worker has no fixed place of employment, the worker's place of employment on a particular working day is the place at which, or the area in which, the worker works or is required to work on that working day.

(4) Where in a prescribed industry or in prescribed circumstances a person (the ***principal***) contracts with another person (the ***contractor***) for the performance by the contractor of work undertaken by the principal, the principal will, for the purposes of this Act, be taken to be the employer of workers employed by the contractor.

(5) The regulations may exclude (either absolutely or subject to limitations or conditions stated in the regulations) specified classes of workers wholly or partially from the application of this Act.

(6) A regulation under subsection (5) may only be made after consultation with the Advisory Committee.

(7) The regulations may, in prescribing work or work of a specified class for the purposes of paragraph (b) of the definition of ***contract of service*** in subsection (1)—

(a) designate a person, or persons of a specified class, as the presumptive employer of a worker who is within the ambit of the relevant prescription;

(b) exclude a person who would otherwise be the employer of such a worker from the definition of ***employer*** in subsection (1).

(8) For the purposes of this Act, a reference to the Federal minimum wage is a reference to a wage applying under a national minimum wage order under Part 2-6 of the *Fair Work Act 2009* of the Commonwealth prescribed by the regulations under this subsection.

(9) For the purposes of this Act, a reference to State average weekly earnings is a reference to the amount last published before the relevant day by the Australian Bureau of Statistics as an estimate of Average Weekly Earnings for Ordinary Hours of Work for each Full-time Employed Adult Male Unit in this State.

(10) For the purposes of this Act—

(a) ***total incapacity*** for work is the incapacity for work that is represented by a worker having no current work capacity within the meaning of this Act; and

(b) ***partial incapacity*** for work is the incapacity for work that is represented by a worker having a current work capacity within the meaning of this Act.

(11) For the purposes of this Act, the date on which an incapacity for work first occurs will be taken to be the first day in respect of which the worker has an entitlement to a payment under Part 4 Division 4 Subdivision 2 on account of that incapacity.

(12) Any period under this Act that relates to a specified number of weeks from the date on which an incapacity for work first occurs will be taken to include (for the purposes of calculating that period) any time when the relevant worker was not in fact incapacitated for work.

(13) For the purposes of this Act, a person is the legal personal representative of a deceased worker if the person is—

(a) a person who is entitled at law to administer the estate of the deceased worker; or

(b) a person who is authorised by the Tribunal (on application made under this subsection) to act under this Act as a legal personal representative of the deceased worker.

(14) For the purposes of this Act, 2 or more workplaces in close proximity may, if the Corporation so determines, be regarded as a single workplace.

(15) A reference in a provision of this Act to a designated form is a reference to a form designated for the purposes of that provision by the Corporation from time to time by notice in the Gazette (and for the purposes of this Act the Corporation may specify information that may be provided in a specified form, not being in the nature of a written or printed form, which will satisfy a requirement as to the provision of information in a designated form).

(16) A reference in a provision of this Act to a designated manner is a reference to a manner designated for the purposes of that provision by the Corporation from time to time by notice in the Gazette.

(17) If a sum of money fixed by this Act is followed by the word "(indexed)", that signifies that the amount is to be adjusted as at 1 January in each year so that the adjusted sum bears to the sum fixed by Parliament the same proportion as the Consumer Price Index for the September quarter of the immediately preceding year bears to the Consumer Price Index for the September quarter of the year immediately preceding the year in which the law fixing the sum took effect, with the amount so adjusted being rounded up under a scheme prescribed by the regulations.

5—Average weekly earnings

(1) Subject to this section, the average weekly earnings of an injured worker is the average weekly amount that the worker earned during the period of 12 months preceding the relevant date in relevant employment.

(2) For the purposes of subsection (1), relevant employment is constituted by—

(a) employment with the employer from whose employment the injury arose; and

(b) if the worker was, at the time of the occurrence of the injury, in the employment of 2 or more employers, employment with each such employer.

(3) For the purposes of this section, any amount paid while a worker was on annual, sick or other leave will be taken to be earnings.

(4) If during the period of 12 months before the relevant date the worker had changed the circumstances of his or her employment from working casually or seasonally to working in permanent employment (whether on a full-time or part-time basis) and the worker was in that permanent employment on the relevant date, the worker's average weekly earnings may be determined by reference to the average weekly amount that the worker earned during the period of that permanent employment rather than during the period of 12 months preceding the relevant date, unless to do so would disadvantage the worker.

(5) If a worker voluntarily (otherwise than by reason of an incapacity resulting from a work injury)—

(a) reduces the normal number of hours worked; or

(b) alters the nature of the work performed with the result that a reduction occurs in the worker's weekly earnings,

any period before the reduction or alteration takes effect will be disregarded for the purposes of determining average weekly earnings.

(6) In addition, if by reason of the shortness of time during which the worker has been in employment, the terms of the worker's employment or for any other reason, it is not possible to arrive at a fair average, the worker's average weekly earnings may be determined by reference to the average weekly amount being earned by other persons in the same employment with the same employer who perform similar work at the same grade as the worker or, if there is no person so employed, by other persons in the same class of employment who perform similar work at the same grade as the worker.

(7) If a worker is a contractor rather than an employee, the worker's average weekly earnings will be determined by reference to the rate of pay that the worker would have received if the worker had been working as an employee and, if there is an award or industrial agreement applicable to the class and grade of work in which the worker was engaged, the worker's average weekly earnings will be determined by reference to that award or industrial agreement.

(8) If—

(a) an employer is a body corporate; and

(b) the worker is a director as well as an employee of the employer,

the worker's average weekly earnings will be determined by reference to the remuneration (calculated on a weekly basis) last reported in a return from the employer to the Corporation under Part 9 Division 7 (unless the Corporation determines that there is good cause not to apply this subsection in the circumstances of the particular case).

(9) If because of a work injury or the gradual onset of a work injury it appears that the level of earnings of an injured worker prior to the relevant date were affected by the injury, the average weekly earnings of the worker must be set at an amount that fairly represents the weekly amount that the worker would have been earning if the level of earnings had not been so affected.

(10) The average weekly earnings of an injured worker who—

(a) was not a full-time worker immediately before the relevant date; and

(b) immediately before the relevant date had been seeking full-time employment; and

(c) had been predominantly during the preceding 18 months a full-time worker,

will be taken to be the average weekly earnings of the worker while employed in full-time employment during the period of 18 months preceding the relevant date.

(11) If a worker who suffers a permanent incapacity (whether total or partial) is under the age of 21 years, the average weekly earnings of the worker must be determined by applying the rate of pay that would have been payable to the worker had the worker been 21 years old and if a worker who suffers a permanent incapacity (whether total or partial) is an apprentice, the average weekly earnings of the worker must be determined by applying the rate of pay that would have been payable to the worker had the worker completed the apprenticeship (and this determination may have effect (if not before) when it is determined that a worker has a permanent incapacity under a redetermination under section 31).

(12) For the purposes of determining the average weekly earnings of a worker—

(a) any component of the worker's earnings attributable to overtime will be disregarded if, at the relevant date, the worker had no reasonable expectation to work overtime within the foreseeable future because of a change in employment arrangements or work practices, or other relevant factors, announced, introduced or occurring on or before the relevant date, but otherwise payments attributable to overtime will be taken into account; and

(b) to the extent that a worker has worked overtime that is to be taken into account, the component for overtime will be an amount calculated as follows:

$$C = \frac{A}{B}$$

where

C is the amount of the component

A is the total of the amounts paid or payable to the worker for overtime during the period used to calculate the average weekly earnings of the worker under a preceding subsection (the ***relevant period***)

B is the number of weeks in the relevant period during which the worker worked or was on annual, sick or other paid leave.

(13) For the purposes of determining the average weekly earnings of a worker—

(a) any amount otherwise payable to the worker that has been the subject of a voluntary salary sacrifice for superannuation purposes by the worker will be taken into account as earnings; and

(b) any non-cash benefit of a prescribed class provided to the worker by an employer—

(i) will be taken into account if the worker does not retain the benefit of the non-cash benefit (and valued after taking into account any principles specified by this Act or prescribed by the regulations); and

(ii) will not be taken into account if the worker retains the benefit of the non-cash benefit.

(14) Despite a preceding subsection, the following will be disregarded for the purposes of determining the average weekly earnings of a worker:

(a) any contribution paid or payable by an employer to a superannuation scheme for the benefit of the worker;

(b) any prescribed allowances.

(15) Despite a preceding subsection—

(a) if an injured worker's remuneration was, at the relevant date, covered by an award or industrial agreement, the worker's average weekly earnings will not be less than the weekly wage to which the worker was then entitled under the award or industrial agreement; and

(b) if, but for this paragraph, the average weekly earnings of a worker (not being a self-employed worker) would be less than the Federal minimum wage applying in relation to the worker (adjusted, in the case of a worker who was working at the relevant date on a part-time basis, in accordance with the regulations so as to provide a pro-rata amount), the average weekly earnings will be fixed at the Federal minimum wage (or, if relevant, the Federal minimum wage as so adjusted); and

(c) the average weekly earnings of a worker will in no case be fixed at more than twice State average weekly earnings.

(16) For the purposes of this section—

(a) a reference to the relevant date is a reference to the date on which the relevant injury occurs; and

(b) a reference to a worker who is working on a part-time basis is a reference to a worker who, after taking into account the usual work patterns of workers in employment of the kind in which the worker is working at the relevant date, is not working the number of hours per week that can be taken to constitute full-time employment.

6—Act to bind Crown

This Act binds the Crown in right of the State and also, so far as the legislative power of the State extends, in all its other capacities.

Part 2—Key principles, concepts and requirements

Division 1—Connection with employment

7—Injury must arise from employment

(1) This Act applies to an injury if (and only if) it arises from employment.

(2) Subject to this section, an injury arises from employment if—

(a) in the case of an injury other than a psychiatric injury—the injury arises out of or in the course of employment and the employment was a significant contributing cause of the injury; and

(b) in the case of a psychiatric injury—

(i) the psychiatric injury arises out of or in the course of employment and the employment was the significant contributing cause of the injury; and

(ii) the injury did not arise wholly or predominantly from any action or decision designated under subsection (4).

(3) In connection with the application of subsection (2) to an injury that is, or results from, the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior injury (a ***prescribed event***)—

(a) in the case of an injury other than a psychiatric injury—employment must be a significant contributing cause of the prescribed event; and

(b) in the case of a psychiatric injury—

(i) employment must be the significant contributing cause of the prescribed event; and

(ii) the prescribed event must not arise wholly or predominantly from any action or decision designated under subsection (4),

and then the injury is only compensable to the extent of and for the duration of the relevant aggravation, acceleration, exacerbation, deterioration or recurrence.

(4) The following are designated for the purposes of subsection (2)(b)(ii) and (3)(b)(ii):

(a) reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, counsel, retrench or dismiss the worker or a decision of the employer not to renew or extend a contract of service;

(b) a decision of the employer, based on reasonable grounds, not to award or provide a promotion, transfer or benefit in connection with the worker's employment;

(c) reasonable administrative action taken in a reasonable manner by the employer in connection with the worker's employment;

(d) reasonable action taken in a reasonable manner under this Act affecting the worker.

(5) For the purposes of this Act, a worker's employment includes—

(a) attendance at the worker's place of employment on a working day but before the day's work begins in order to prepare, or be ready, for work; and

(b) attendance at the worker's place of employment during an authorised break from work; and

(c) attendance at the worker's place of employment but after work ends for the day while the worker is preparing to leave, or in the process of leaving, the place; and

(d) attendance at an educational institution under the terms of an apprenticeship or other legal obligation, or at the employer's request or with the employer's approval; and

(e) attendance at a place to receive a medical service, to obtain a medical report or certificate (or to be examined for the purpose), to receive recovery/return to work services or for the purposes of a recovery/return to work plan, or to apply for, or receive, compensation for a work injury.

(6) Any injury attributable to surgery or other treatment or service performed with due care and skill by a person professing to have particular skills and undertaken or provided while attending at a place referred to in subsection (5)(e) will be taken to constitute part of the original work injury.

(7) An injury does not arise from employment if it arises out of or in the course of the worker's involvement in a social or sporting activity, except where the activity forms part of the worker's employment or is undertaken at the direction or request of the employer.

(8) An injury that arises out of or in the course of a journey arises from employment if (and only if)—

(a) the journey is undertaken in the course of carrying out duties of employment; or

(b) the journey is between—

(i) the worker's place of residence and place of employment; or

(ii) the worker's place of residence or place of employment and—

(A) an educational institution the worker attends under the terms of an apprenticeship or other legal obligation, or at the employer's request or with the employer's approval; or

(B) a place the worker attends to receive a medical service, to obtain a medical report or certificate (or to be examined for that purpose), to receive recovery/return to work services or for the purposes of a recovery/return to work plan, or to apply for, or receive, compensation for a compensable injury,

and there is a real and substantial connection between the employment and the journey being undertaken at the time of the accident out of which the injury arises.

(9) However, the fact that a worker has an accident in the course of a journey to or from work does not in itself establish a sufficient connection between the accident and the employment for the purposes of subsection (8)(b).

(10) The journey between places mentioned in subsection (8)(b) must be a journey by a reasonably direct route but may include an interruption or deviation if it is not, in the circumstances of the case, substantial, and does not materially increase the risk of injury to the worker.

(11) If—

(a) a worker's injury consists of the aggravation, acceleration, exacerbation, deterioration or recurrence of a pre-existing coronary heart disease; and

(b) the injury arises in the course of employment,

it will be presumed, in the absence of proof to the contrary, that the employment was a significant contributing cause of the injury.

8—Effect of misconduct etc

(1) A worker who is acting in connection with, and for the purposes of, the employer's trade or business is presumed to be acting within his or her employment despite the fact that—

(a) the worker is acting in contravention of a statutory or other regulation applicable to the employment; or

(b) the worker is acting without, or in contravention of, instructions from the employer.

(2) However, a worker will not be entitled to receive any services or benefits under this Act in relation to an injury if—

(a) the worker is guilty of misconduct or acts in contravention of instructions from the employer during the course of an attendance under section 7(5); or

(b) it is established on the balance of probabilities that the injury is wholly or predominantly attributable to—

(i) serious and wilful misconduct on the part of the worker; or

(ii) the influence of alcohol or a drug voluntarily consumed by the worker (other than a drug lawfully obtained and consumed in a reasonable quantity by the worker).

(3) Subsection (2)(a) does not apply in a case of death or permanent total incapacity for work and subsection (2)(b) does not apply in the case of death or serious and permanent injury.

9—Evidentiary provision

(1) Subject to this section, an injury is not compensable under this Act unless it is established on the balance of probabilities that it arises from employment.

(2) Subsection (1) operates—

(a) subject to the qualification that if a worker suffers an injury of a kind referred to in the first column of Schedule 2 and has been employed in work of a type referred to in the second column of Schedule 2 opposite the injury, the worker's injury is presumed, in the absence of proof to the contrary, to have arisen from employment; and

(b) subject to Schedule 3.

(3) If a worker retires or is retired from employment on account of age or ill-health and the worker makes a claim for noise induced hearing loss after the expiration of 2 years from the date of the retirement, subsection (2)(a) does not apply in relation to that claim.

(4) A regulation made on the recommendation, or with the approval, of the Corporation or the Advisory Committee may—

(a) extend the operation of subsection (2)(a) to injuries and types of work prescribed in the regulation;

(b) extend the operation of Schedule 3 to an injury and corresponding qualifying period prescribed in the regulation.

Division 2—Connection with State

10—Territorial application of Act

(1) This Act applies to a worker's employment if (and only if) that employment is connected with this State.

(2) The fact that a worker is outside this State when an injury occurs does not prevent an entitlement to compensation arising under this Act in respect of employment that is connected with this State.

(3) A worker's employment is connected with—

(a) the State in which the worker usually works in that employment; or

(b) if no State or no one State is identified by paragraph (a), the State in which the worker is usually based for the purposes of that employment; or

(c) if no State or no one State is identified by paragraph (a) or (b), the State in which the employer's principal place of business in Australia is located.

(4) In the case of a worker working on a ship, if no State or no one State is identified by subsection (3), a worker's employment is, while working on a ship, connected with the State in which the ship is registered or (if the ship is registered in more than 1 State) the State in which the ship most recently became registered.

(5) If no State is identified by subsection (3) or (if applicable) (4), a worker's employment is connected with this State if—

(a) a worker is in this State when the injury occurs; and

(b) there is no place outside Australia under the legislation of which the worker may be entitled to compensation for the same matter.

(6) In deciding whether a worker usually works in a State—

(a) regard must be had to the worker's work history with the employer over the preceding 12 months and the intentions of the worker and employer; but

(b) regard must not be had to any temporary arrangement under which the worker works in a State for a period of not longer than 6 months.

(7) Subject to subsection (6), in determining whether a worker usually works in a State or is usually based in a State for the purposes of employment, regard must be had to any period during which a worker works in a State or is in a State for the purposes of employment whether or not under the statutory workers compensation scheme of that State the person is regarded as a worker or as working or employed in that State.

(8) Compensation under this Act does not apply in respect of the employment of a worker on a ship if the *Seafarers Rehabilitation and Compensation Act 1992* of the Commonwealth applies to the worker's employment.

(9) In this section—

ship means any kind of vessel used in navigation by water, however propelled or moved, and includes—

(a) a barge, lighter, or other floating vessel; and

(b) an air-cushion vehicle, or other similar craft,

used wholly or primarily in navigation by water;

State includes a Territory and, in a geographical sense, a State's or Territory's relevant adjacent area as described in Schedule 4.

11—Determination of State with which worker's employment is connected in proceedings under this Act

(1) If the question of whether this State is connected with a worker's employment arises in proceedings in the Tribunal or a court in relation to a claim for compensation under this Act, the Tribunal or court must—

(a) determine the State with which the worker's employment is connected in accordance with section 10; and

(b) cause that determination to be entered in its records.

(2) The Tribunal must, in determining a question under subsection (1), be constituted of 1 or more presidential members and if the question arises in proceedings that are not before a presidential member (or presidential members) then the question is to be referred, on an interlocutory basis, to a presidential member of the Tribunal.

(3) Subsection (1) does not apply if there is a determination that is to be recognised under section 12.

12—Recognition of previous determinations

(1) If a determination of the State with which a worker's employment is connected has been made—

(a) by the Tribunal or a court under section 11; or

(b) by a designated court under a provision of a law that corresponds with section 11, or under another provision of a law prescribed by the regulations for the purposes of this provision; or

(c) by a court of this State or another State in the course of proceedings that are relevant to the application of this Act or a corresponding law, or that relate to a claim for compensation or damages,

the State so determined is to be recognised for the purposes of this Act as the State with which the worker's employment is connected.

(2) This section does not prevent any appeal relating to any such determination and if the determination is altered on appeal, the altered determination is to be recognised under subsection (1).

(3) In this section—

designated court means—

(a) the Supreme Court of a State in which a corresponding law is in force; or

(b) a court, tribunal or other decision-making body of a State in which a corresponding law is in force that is declared by the regulations to be a designated court for the purposes of this section;

State includes a Territory.

Division 3—Fundamental principles, rights and obligations

13—The Corporation

(1) The Corporation, in acting under and for the purposes of this Act, must—

(a) adopt a service-orientated approach that is focused on early intervention and the interests of workers and employers; and

(b) seek to act professionally and promptly in everything that it does; and

(c) be responsible and accountable in its relationships with others; and

(d) without limiting a preceding paragraph, take reasonable steps to comply with any request made by a worker under section 15(2).

(2) The Corporation must, in connection with subsection (1), develop and maintain plans or strategies that are designed to establish practices and procedures under which the specific circumstances of an injured worker and his or her employer will be addressed and with the objective of—

(a) ensuring early and timely intervention occurs to improve recovery and return to work outcomes including after retraining (if required); and

(b) achieving timely, evidence based decision-making that is consistent with the requirements of this Act; and

(c) wherever possible, providing a face to face service where there is a need for significant assistance, support or services; and

(d) ensuring regular reviews are taken in relation to a worker's recovery and, where possible, return to work; and

(e) ensuring the active management of all aspects of a worker's injury and any claim under this Act; and

(f) encouraging an injured worker and his or her employer to participate actively in any recovery and return to work processes; and

(g) minimising the risk of litigation.

(3) The policies and principles set out in this section do not give rise to substantive rights or liabilities (compared to rights or liabilities established or prescribed under other relevant provisions of this Act).

14—Service standards

The Corporation must adopt and apply the service standards set out in Schedule 5 (but these standards do not, in themselves, give rise to substantive rights or liabilities (compared to rights or liabilities established or prescribed under other relevant provisions of this Act)).

15—Workers

(1) A worker who has suffered a work injury is entitled to expect—

(a) early intervention by the Corporation in providing recovery and return to work services; and

(b) the Corporation to actively manage the worker's injury and claim and to provide services in a manner consistent with the requirements of this Act; and

(c) his or her employer to participate and cooperate in assisting the worker's recovery and return to work and to reasonably support the worker in receiving any benefit available under this Act.

(2) A worker may reasonably request the Corporation to review the provision of any service to the worker under this Act or to investigate any circumstance where it appears that the worker's employer is not complying with any requirement of this Act as to the retention, employment or re-employment of the worker.

(3) A worker who has suffered a work injury must, in a manner consistent with the objects of this Act—

(a) participate in all activities designed to enable the worker to recover and return to work as soon as is reasonably practicable; and

(b) without limiting paragraph (a)—

(i) participate and cooperate in the establishment of a recovery/return to work plan; and

(ii) comply with obligations imposed on the worker by or under a recovery/return to work plan; and

(c) ensure that the Corporation is provided with current medical certificates (in the designated form provided by recognised health practitioners) with respect to any incapacity for work for which weekly payments are being made to the worker under this Act so as to provide evidence to support the continuation of those payments; and

(d) return to suitable employment when reasonably able to do so; and

(e) take reasonable steps to mitigate any possible loss on account of the work injury.

(4) Subsection (3)(a), (b) and (d) will not apply in relation to a seriously injured worker (who may decide the extent to which he or she will seek to participate in any processes designed to have the worker return to work).

(5) This section does not give rise to substantive rights or liabilities (but nothing in this section detracts from rights or liabilities established or prescribed under other relevant provisions of this Act (including section 16)).

16—Worker's duty to give notice of injury

(1) If a worker suffers a work injury, notice of that injury must be given—

(a) to the employer by whom the worker is employed at the time of the occurrence of the injury; or

(b) if the worker is not in employment or is self-employed—to the Corporation.

(2) Notice of an injury should be given—

(a) if practicable within 24 hours after the occurrence of the injury but, if that is not practicable, as soon as practicable after the occurrence of the injury;

(b) if the worker is not, immediately after the occurrence of the injury, aware of the injury—as soon as practicable after the worker becomes so aware;

(c) if the worker dies without having become so aware or before it is practicable to give such a notice—as soon as practicable after the worker's death.

(3) Notice of an injury—

(a) may be given orally or in writing; and

(b) should specify to the best of the knowledge, information and belief of the person giving the notice—

(i) the day on which the injury occurred; and

(ii) the place at which the injury occurred; and

(iii) the nature of the injury; and

(iv) the cause of the injury.

(4) For the purposes of this section, notice of an injury will be taken to have been given to an employer if—

(a) it is given to—

(i) the employer at any place of business of the employer; or

(ii) any person under whose supervision the worker was employed at the time of the injury; or

(iii) any person designated for the purpose by the worker's employer; or

(b) it is given to the employer in the manner prescribed by the regulations.

(5) A person by whom a notice under this section is given orally must, at the request of the person to whom the notice is given, complete a written statement in a form determined by the Corporation.

(6) Subject to subsection (8), if an employer (not being a self-insured employer) receives notice of an injury given or purportedly given under this section the employer must, within 5 business days after the receipt of the notice, send a copy of the notice to the Corporation.

Maximum penalty: $1 500.

(7) If it appears from a notice under this section that the worker was not, at the date of the notice, in the employment of the employer from whose employment the injury arose, the Corporation must (where it is practicable to do so) send a copy of the notice to that employer.

(8) The Corporation may, by notice in the Gazette—

(a) exclude from the application of this section injuries of a class specified in the notice;

(b) vary, in relation to cases of a specified class, the time at which an employer is required to report to the Corporation under this section.

17—Employers

(1) An employer of a worker who has suffered a work injury is entitled to expect—

(a) early intervention by the Corporation in providing recovery and return to work services to the worker; and

(b) the Corporation to act fairly and reasonably in a manner consistent with the requirements of this Act; and

(c) support in managing claims and the provision of services available to the worker under this Act.

(2) The employer of a worker who has suffered a work injury must, in a manner consistent with the objects of this Act, so far as is reasonably practicable—

(a) support the worker in the worker's participation in activities designed to enable the worker to recover and return to work; and

(b) without limiting paragraph (a)—

(i) participate and cooperate in the establishment of any recovery/return to work plan that is required for the worker; and

(ii) comply with obligations imposed on the employer by or under a recovery/return to work plan for the worker; and

(c) take reasonable steps to mitigate any possible loss on account of the work injury.

(3) This section does not give rise to substantive rights or liabilities (but nothing in this section detracts from rights or liabilities established or prescribed under other relevant provisions of this Act (including section 18)).

18—Employer's duty to provide work

(1) If a worker who has been incapacitated for work in consequence of a work injury is able to return to work (whether on a full-time or part-time basis and whether or not to his or her previous employment), the employer from whose employment the injury arose (the ***pre-injury employer***) must provide suitable employment for the worker (the employment being employment for which the worker is fit and, subject to that qualification and this section, so far as reasonably practicable the same as, or equivalent to, the employment in which the worker was working immediately before the incapacity).

(2) Subsection (1) does not apply if—

(a) it is not reasonably practicable to provide employment in accordance with that subsection (and the onus of establishing that lies on the employer); or

(b) the worker left the employment of that employer before the commencement of the incapacity for work; or

(c) the worker terminated the employment after the commencement of the incapacity for work; or

(d) new or other employment options have been agreed between the worker, the employer and the Corporation under section 25(10); or

(e) the worker has otherwise returned to work with the pre-injury employer or another employer.

(3) Furthermore, if—

(a) a worker who has been incapacitated for work in consequence of a work injury seeks employment with the pre-injury employer consistent with the requirements of subsection (1); and

(b) the worker, in seeking the employment—

(i) by written notice to the employer—

(A) confirms that he or she is ready, willing and able to return to work with the employer; and

(B) provides information about the type of employment that the worker considers that he or she is capable of performing; and

(ii) complies with any other requirements prescribed by the regulations; and

(c) the employer fails, within a reasonable time, to provide suitable employment to the worker,

the worker may apply to the Tribunal for an order under subsection (5).

(4) If an employer fails to provide suitable employment under subsection (3) within 1 month after the worker seeks such employment in accordance with that subsection (the ***prescribed period***), the application by the worker to the Tribunal may be made within 1 month after the end of the prescribed period unless the Tribunal allows an extension of time.

(5) If, on an application under subsection (3), the Tribunal is satisfied that it is not unreasonable for the employer to provide employment to the worker, the Tribunal must order the employer to provide to the worker employment specified by the Tribunal unless the Tribunal, in the exercise of its adjudicative function, determines otherwise.

(6) A worker who makes an application under subsection (3) is entitled, subject to subsections (8) and (9) and to limits prescribed by the regulations, to an award against the relevant employer for the worker's reasonable costs of the proceedings before the Tribunal.

(7) If on an application under subsection (3) the Tribunal declines to make an order in favour of the worker under subsection (5), the Corporation is liable, subject to subsection (8) and to limits prescribed by the regulations—

(a) for the employer's reasonable costs of the proceedings before the Tribunal (unless those costs are covered by an award under subsection (9)(a)); and

(b) for the costs payable to the worker under subsection (6).

(8) Costs may only be awarded to cover—

(a) the cost of representation by a legal practitioner or an officer or employee of an industrial association; and

(b) costs of a kind authorised by the regulations that were reasonably incurred.

(9) If the Tribunal is of the opinion that a worker acted unreasonably, frivolously or vexatiously in bringing or in relation to the conduct of proceedings under subsection (5), the Tribunal may—

(a) decline to make an award of costs in favour of the worker and may (if it thinks fit) make an award of costs against the worker; or

(b) reduce the amount of the award of costs to which the worker would otherwise have been entitled.

(10) Subject to subsection (11), an award of costs to cover professional advice or assistance may, if the Tribunal considers appropriate, be made in favour of the person who provided the professional advice or assistance.

(11) An award of costs to cover the cost of representation by an officer or employee of an industrial association are payable to the industrial association.

(12) If—

(a) the Tribunal orders an employer to provide employment to a worker under subsection (5); and

(b) the employer fails to comply with that order; and

(c) the worker applies to the Corporation for financial support under subsection (13),

the Corporation must, subject to subsection (14), provide financial support to the worker under subsection (13).

(13) The financial support will be in the form of weekly payments that represent the weekly amounts that the worker would be expected to receive from the employer if the employer complied with the order of the Tribunal.

(14) The Corporation is not required to make a payment under subsection (13) in respect of a failure on the part of the employer after the end of the period of 104 weeks from the date on which the incapacity for work referred to in subsection (3)(a) first occurred (the ***prescribed period***) and any liability of the Corporation to provide financial support to the worker under subsection (13) ceases at the end of the prescribed period.

(15) The Corporation may recover any amount paid to a worker under subsection (13), together with interest at the prescribed rate, as a debt from the employer in default.

(16) Nothing in subsections (12) to (15) (inclusive)—

(a) limits any other penalty or liability that may be imposed on the employer under this or any other Act or law on account of the employer's failure to comply with an order of the Tribunal; or

(b) derogates from any obligation of the employer to pay wages to the worker under this or any other Act or law.

(17) A reference in this section to suitable employment to be provided by a worker's employer includes employment in respect of which—

(a) the number of hours each day or week that the worker performs work; or

(b) the range of duties the worker performs,

is suitably increased in stages (in accordance with a recovery/return to work plan or otherwise).

19—Payment of wages for alternative or modified duties

If a worker who has been incapacitated for work in consequence of a work injury undertakes alternative or modified duties under employment or an arrangement that falls outside the worker's contract of service for the employment from which the injury arose, the employer must pay an appropriate wage or salary in respect of those duties unless otherwise determined by the Corporation.

20—Additional requirement with respect to termination of employment

(1) If a worker has suffered a work injury, the employer from whose employment the injury arose must not terminate the worker's employment without first giving the Corporation and the worker at least 28 days notice of the proposed termination.

(2) However, notice of termination is not required under this section if—

(a) the employment is properly terminated on the ground of serious and wilful misconduct; or

(b) the worker is neither participating in a recovery/return to work plan, nor receiving compensation, for the work injury; or

(c) the worker's rights to compensation for the injury have been exhausted or the time for making a claim for compensation has expired.

(3) The burden of establishing that an employer terminated a worker's employment on the ground of serious and wilful misconduct lies on the employer.

Division 4—Seriously injured workers

21—Seriously injured workers

(1) This Act makes special provision in a number of places for seriously injured workers.

(2) For the purposes of this Act, a seriously injured worker is a worker whose work injury has resulted in permanent impairment and the degree of whole person impairment has been assessed under Division 5 for the purposes of this Act to be 30% or more.

(3) Pending an assessment of permanent impairment, the Corporation may on its own initiative, or must on application made by the worker in accordance with the regulations, make an interim decision to the effect that a worker will be taken to be a seriously injured worker under this Act if—

(a) it is satisfied, or it appears, that the worker's injury has or will result in permanent impairment; and

(b) it appears that the degree of whole person impairment is likely to be 30% or more,

and the Corporation's decision will have effect under this Act in accordance with its terms.

(4) An interim decision under subsection (3)—

(a) must be made in accordance with any requirements or principles prescribed by the regulations; and

(b) has effect until an assessment of whole person impairment has been made under Division 5.

(5) Unless or until a worker is assessed or determined to be a seriously injured worker as contemplated by this section, the worker will be taken not to be a seriously injured worker for the purposes of this Act.

(6) However, if a worker is taken not to be a seriously injured worker and the worker at a later time is characterised as a seriously injured worker under subsection (2) or determined to be a seriously injured worker under subsection (3)—

(a) the worker will be taken to have been a seriously injured worker from the date of the injury; and

(b) the worker is entitled to be paid the amounts that would have constituted the worker's entitlements under this Act had the worker been taken to be a seriously injured worker from the date on which an incapacity for work in consequence of the relevant work injury first occurred after taking into account any amount already paid under this Act.

(7) An amount paid under subsection (6)(b) will be increased by interest at the prescribed rate.

(8) In assessing whether the 30% threshold under this section has been met (that is, whether the degree of whole person impairment resulting from a work injury is at least 30%)—

(a) impairment resulting from physical injury is to be assessed separately from impairment resulting from psychiatric injury; and

(b) in assessing impairment resulting from physical injury or psychiatric injury, no regard is to be had to impairment that results from consequential mental harm; and

(c) in assessing the degree of whole person impairment resulting from physical injury, no regard is to be had to impairment that results from a psychiatric injury or consequential mental harm; and

(d) the 30% threshold is not met unless the degree of whole person impairment resulting from physical injury is at least 30% or the degree of whole person impairment resulting from psychiatric injury is at least 30%.

(9) The Corporation is not required to consider more than 1 application by a worker under subsection (3) unless directed to do so by the Tribunal on application made by the worker under this subsection.

(10) Nothing in this section limits or affects the operation of Part 4 Division 6 or Division 7 or Part 5.

Division 5—Assessment of permanent impairment

22—Assessment of permanent impairment

(1) This section sets out a scheme for assessing the degree of impairment (being whole person impairment) that applies to a work injury that results in permanent impairment.

(2) An assessment under this section—

(a) must be made in accordance with the Impairment Assessment Guidelines; and

(b) must be made by a medical practitioner who holds a current accreditation under this section.

(3) The Minister will publish guidelines (the ***Impairment Assessment Guidelines***) for the purposes of the assessment of permanent impairment (being whole person impairment).

(4) The guidelines under subsection (3)—

(a) must be published in the Gazette; and

(b) may adopt or incorporate the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time; and

(c) must incorporate a methodology that arrives at an assessment of the degree of impairment of the whole person (***whole person impairment***); and

(d) may specify procedures to be followed in connection with an assessment; and

(e) may have effect on a day specified by the Minister by notice in the Gazette; and

(f) may be amended or substituted by the Minister from time to time.

(5) The Minister must, before publishing or amending the Impairment Assessment Guidelines, consult with professional associations representing the class or classes of medical practitioners who hold accreditations under this section.

(6) An amendment or substitution in relation to the Impairment Assessment Guidelines under subsection (4)(f) will only apply in respect of an injury occurring on or after the date the amendment or substitution takes effect.

(7) An assessment of the degree of impairment resulting from an injury—

(a) must not be made until there is evidence that the injury has stabilised; and

(b) must, subject to subsection (8), be based on the worker's current impairment as at the date of assessment, including any changes in the signs and symptoms following any medical or surgical treatment undergone by the worker in respect of the injury; and

(c) must be made by an accredited medical practitioner selected in accordance with the Impairment Assessment Guidelines.

(8) An assessment must take into account the following principles:

(a) if a worker presents for assessment in relation to injuries which occurred on different dates, the impairments are to be assessed chronologically by date of injury;

(b) impairments from unrelated injuries or causes are to be disregarded in making an assessment;

(c) impairments from the same injury or cause are to be assessed together or combined to determine the degree of impairment of the worker (using any principle set out in the Impairment Assessment Guidelines);

(d) impairment resulting from physical injury is to be assessed separately from impairment resulting from psychiatric injury;

(e) in assessing impairment resulting from physical injury or psychiatric injury, no regard is to be had to impairment that results from consequential mental harm;

(f) in assessing the degree of permanent impairment resulting from physical injury, no regard is to be had to impairment that results from a psychiatric injury or consequential mental harm;

(g) any portion of an impairment that is due to a previous injury (whether or not a work injury or whether because of a pre-existing condition) that caused the worker to suffer an impairment before the relevant work injury is to be deducted for the purposes of an assessment, subject to any provision to the contrary made by the Impairment Assessment Guidelines;

(h) assessments are to comply with any other requirements specified by the Impairment Assessment Guidelines.

(9) A number determined under the Impairment Assessment Guidelines with respect to a value of a person's degree of whole person impairment may be rounded up or down according to any principle set out in the Impairment Assessment Guidelines.

(10) Subject to subsections (11) to (15) (inclusive), only 1 assessment may be made in respect of the degree of permanent impairment of a worker from 1 or more injuries (including consequential injuries) arising from the same trauma (and any injury that may subsequently develop or manifest itself or develop after the assessment of impairment is made will not be assessed).

(11) For the purposes of subsection (10), an assessment (or parts of an assessment) may be undertaken by more than 1 accredited medical practitioners and their assessments combined so as to create 1 assessment under that subsection.

(12) Subsection (10) does not affect the requirement under subsection (8)(d) for impairment resulting from physical injury to be assessed separately from impairment resulting from psychiatric injury.

(13) Subsection (10) operates subject to any assessment made under Part 8 (and the exercise of any adjudicative function by the Tribunal or a court).

(14) An interim decision under section 21 will not be taken to constitute an assessment for the purposes of subsection (10).

(15) Subsection (10) does not apply in any circumstances prescribed by the regulations.

(16) For the purposes of this section, the Minister must establish an accreditation scheme after consultation with the Advisory Committee.

(17) The accreditation scheme—

(a) will provide for the accreditation of medical practitioners who are determined, under the scheme, to be suitably qualified to undertake assessments for the purposes of this section; and

(b) will work on the basis that the Minister will issue the accreditations; and

(c) may provide for the suspension or cancellation of accreditation by the Minister on specified grounds; and

(d) may be amended or substituted by the Minister from time to time after consultation with the Advisory Committee.

(18) An accreditation will be issued by the Minister—

(a) for a period specified by the Minister; and

(b) on conditions determined by the Minister.

Part 3—Early intervention, recovery and return to work

23—Object

(1) The object of this Part is to establish a system that seeks to ensure that a worker who suffers a work injury—

(a) achieves the best practicable levels of physical and mental recovery; and

(b) returns to the worker's pre-injury work or, if that is not reasonably practicable, is in any event restored to the workforce and the community in a timely, safe and durable way.

(2) Without limiting subsection (1), the aim is—

(a) to intervene and provide services under this Part as early as is reasonably practicable after a worker suffers a work injury; and

(b) in connection with paragraph (a)—

(i) to return the worker to work in the worker's pre-injury duties; or

(ii) if it is not reasonably practicable to return the worker to work in the worker's pre-injury duties—to return the worker, either temporarily or permanently, to other suitable duties with the worker's pre-injury employer; or

(iii) if subparagraphs (i) and (ii) are not reasonably practicable—to return the worker, either temporarily or permanently, to work with another employer; or

(iv) if subparagraphs (i), (ii) and (iii) are not reasonably practicable—to maximise the worker's independent functioning as a member of the community; and

(c) to ensure that any employer, worker or other person involved in a recovery or return to work process cooperate to achieve the object referred to in subsection (1).

(3) This Part may apply to a worker even if it has not been finally established that the worker's injury is a work injury.

24—Early intervention, recovery and return to work services

(1) The services that may be provided under this Part (***recovery/return to work services***) may do 1 or more of the following:

(a) provide for the physical, mental or vocational assessment of a worker;

(b) provide advisory services to a worker, members of the family of a worker, an employer and others;

(c) assist a worker in retaining, seeking or obtaining employment;

(d) assist in the training or retraining of a worker;

(e) assist a worker to find or establish appropriate accommodation;

(f) provide equipment, facilities and services to assist a worker to cope with any injury at home or in the workplace;

(g) provide assistance to a person who may be in a position to help a worker to overcome or cope with an injury;

(h) provide necessary and reasonable costs (including costs of travel, accommodation and child care) incurred by a worker in order to receive or participate in any services;

(i) provide anything else that may assist in achieving the objects of this Part.

(2) The services provided to a worker may recognise that if a return to work is not reasonably practicable in the short term that the services may assist a worker's overall recovery by assisting the worker to be restored to the community at the beginning and to return to work in the medium or longer term (recognising that some workers may have minimal prospects of returning to work at all due to the seriousness of the injury).

(3) Action to determine the most appropriate recovery/return to work services to be provided to an injured worker must be taken as early as possible after the worker suffers the work injury.

(4) The Corporation must take reasonable steps to ensure that a reasonable level of recovery/return to work services are provided to an injured worker taking into account the nature and extent of the worker's injury, the circumstances of the worker, and any other relevant factor.

(5) Recovery/return to work services will be provided by persons accredited, approved or appointed by the Corporation.

25—Recovery/return to work plans

(1) Where it appears that a worker is (or is likely) to be incapacitated for work by a work injury for more than 4 weeks, the Corporation must ensure that a plan (a ***recovery/return to work plan***) is prepared for the worker.

(2) In connection with subsection (1)—

(a) a recovery/return to work plan may be prepared even if the period of incapacity may be less than 4 weeks; and

(b) a recovery/return to work plan may be prepared for a worker who may not be returning to work in the short or medium term so that the initial focus of the plan is on restoring the worker to the community at the beginning; and

(c) a recovery/return to work plan may be prepared for a worker who has no reasonable prospect of returning to work but where the preparation of a plan would still assist in restoring the worker to the community; and

(d) a recovery/return to work plan need not be prepared for a worker if the Corporation considers that, due to the severity of the injury, the focus should be on other forms of support and services (unless or until the worker becomes capable of participating in a plan).

(3) Subject to taking into account the provisions of subsection (2), a recovery/return to work plan will set out the actions and responsibilities of a worker, an employer and the Corporation that are to be undertaken or assumed in order to achieve the earliest possible safe return to work or, if relevant, to the community on a durable basis.

(4) A recovery/return to work plan may impose obligations on the worker and on the employer (and, in the case of a dispute, will continue to bind the worker and the employer subject to the outcome of any process or procedure associated with determining the dispute).

(5) In preparing a recovery/return to work plan—

(a) consultation must occur with the worker and, insofar as is necessary or appropriate, with the employer out of whose employment the injury arose; and

(b) assistance may be obtained from the relevant return to work co-ordinator (if appointed) and any person who might be providing services under the plan; and

(c) insofar as is reasonably practicable—

(i) medical records relevant to the worker's condition should be reviewed; or

(ii) consultation should occur with any health practitioner who is treating the worker for a relevant injury; and

(d) consultation may occur with any other person or body as the Corporation thinks fit.

(6) A recovery/return to work plan must comply with standards and requirements prescribed by the regulations.

(7) The Corporation must give the worker and the employer a copy of the recovery/return to work plan.

(8) A recovery/return to work plan may be reviewed from time to time.

(9) In connection with the operation of subsection (8), the regulations may—

(a) specify when a recovery/return to work plan should be reviewed; and

(b) prescribe procedures to be followed when a recovery/return to work plan is being reviewed.

(10) Without limiting subsections (8) and (9), if—

(a) a worker who has been incapacitated for work in consequence of a work injury has not, at the expiration of the period of 6 months from the date on which the incapacity for work first occurred, returned to work in employment that is the same as, or equivalent to, the employment in which the worker was employed immediately before the incapacity; and

(b) the worker is not working to his or her full capacity (after taking into account the nature and effect of the worker's work injury and any other relevant factor),

new or other employment options for the worker need to be taken into account in order to assist the worker to return to work in suitable employment.

(11) A plan under this section must not impose any obligation on a seriously injured worker to return to work (but may include processes designed to assist a seriously injured worker to return to work at the request of the worker).

26—Return to work co-ordinators

(1) Subject to this section, an employer must appoint (and retain) a return to work co-ordinator (referred to in this section as a ***co-ordinator***).

(2) A co-ordinator must be based in South Australia.

(3) The employer must appoint a co-ordinator—

(a) within 6 months after the requirement to be registered under Part 9 first arises (disregarding any exemption that may be available under that Part) or within a later period approved by the Corporation; and

(b) within 3 months after a vacancy occurs in the office of a co-ordinator under this section.

Maximum penalty: $10 000.

(4) A co-ordinator has the following functions:

(a) to assist workers suffering from work injuries, where prudent and practicable, to remain at or return to work as soon as possible after the occurrence of the injury;

(b) to assist the Corporation in the preparation and implementation of any recovery/return to work plan for an injured worker;

(c) to liaise with any persons involved in the provision of medical and other relevant services to workers;

(d) to monitor the progress of an injured worker's capacity to return to work;

(e) to take steps to, as far as practicable, prevent the occurrence of an aggravation, acceleration, exacerbation, deterioration or recurrence of an injury when a worker returns to work.

(5) An employer must—

(a) provide such facilities and assistance as are reasonably necessary to enable a co-ordinator to perform his or her functions under this section; and

(b) ensure that a co-ordinator plays an active role in achieving a timely, safe and durable return to work for a worker who has suffered a work injury with a particular emphasis on early intervention (to the extent contemplated by this Part); and

(c) comply with any training or operational guidelines published by the Corporation from time to time for the purposes of this section.

(6) The regulations may exempt an employer, or employers of a prescribed class, from a requirement under this section.

27—Standards and facilities established by Corporation

The Corporation may—

(a) enter into arrangements with any government agency or other body under which facilities and services, including medical services, will be provided to injured workers; and

(b) with the approval of the Minister, establish clinics and other facilities and services for the assessment, treatment and recovery of injured workers and, without limiting this section, the provision of recovery/return to work services; and

(c) establish and maintain a register of persons and organisations that are, in the opinion of the Corporation, properly qualified and equipped to provide facilities and services in connection with the assessment, treatment and recovery of injured workers and, without limiting this section, the provision of recovery/return to work services; and

(d) authorise the expenditure of money on behalf of the Corporation for the purposes of this Part (subject to any limits or conditions set or determined by the Corporation).

28—Rates for provision of services

(1) The Minister may from time to time, by notice in the Gazette, on the recommendation of the Corporation, publish scales of charges that will apply in relation to the provision of recovery/return to work services.

(2) Before the Corporation makes a recommendation to the Minister about the publishing of a scale of charges, the Corporation must consult with—

(a) professional associations representing the providers of services of the relevant kind; and

(b) associations representing employers (including the South Australian Employers Chamber of Commerce and Industry); and

(c) associations representing employees (including the United Trades and Labor Council).

(3) A person who provides a recovery/return to work service for an injured worker for which a scale of charges has been published under this section, knowing the worker to be receiving the services under this Act, must not charge for the service an amount exceeding the amount allowed under that scale of charges.

Maximum penalty: $2 500.

(4) Nothing in this section prevents the Corporation from entering into an agreement for the provision of recovery/return to work services that are not subject to a notice published under this section at rates set or determined under the agreement.

29—Related initiatives

The Corporation may, as it thinks fit—

(a) disseminate information that relates to work related injuries with a view to—

(i) preventing their occurrence; or

(ii) assisting workers with managing such injuries and with their recovery from such injuries (insofar as may be practicable); and

(b) conduct, participate in or subsidise research that will promote the objects of this Part; and

(c) encourage and support the work of organisations that provide assistance to workers who have suffered work related injuries.

Part 4—Financial benefits

Division 1—Claims

30—Claims

(1) Subject to this section, a claim under this Part—

(a) must be made in a manner and form approved by the Corporation; and

(b) must be made within the prescribed period; and

(c) must be supported by a certificate in the designated form by a designated person certifying—

(i) the nature of the injury;

(ii) the probable cause of the injury so far as that is ascertainable by the designated person;

(iii) if the claimant claims to be incapacitated for work—the claimant's current and likely future capacity;

(iv) any other matter specified by the Corporation with the approval of the Minister.

(2) If a notice of an injury is required under this Act, a claim may not be made in respect of that injury unless notice of the injury has been given as required.

(3) Despite subsections (1) and (2)—

(a) the absence of, or a defect in, a notice of injury is not a bar to the making of a claim if—

(i) the proper determination of the claim has not been substantially prejudiced; or

(ii) the failure to give the notice, or the defect in the notice, was occasioned by ignorance of the claimant, mistake or absence from the State, or other reasonable cause; and

(b) a failure to make a claim within the prescribed period is not a bar to the making of a claim if—

(i) the proper determination of the claim has not been substantially prejudiced; or

(ii) the failure to make the claim within the prescribed period was occasioned by ignorance of the claimant, mistake or absence from the State, or other reasonable cause.

(4) A claim must be given at first instance as follows:

(a) where the worker is at the commencement of the incapacity in employment—the claim must be given to the employer;

(b) in any other case—the claim must be given to the Corporation.

(5) Within 5 business days after receipt of a claim under this section, an employer (not being a self-insured employer) must forward to the Corporation—

(a) a copy of the claim;

(b) a statement in the designated form.

Maximum penalty: $1 500.

(6) An employer (not being a self-insured employer) must furnish to the Corporation, in such manner and form as the Corporation may determine, such other information as the Corporation may reasonably require in order to assess or determine a claim.

Maximum penalty: $1 500.

(7) If it appears from a claim that the worker was not, at the time of making the claim, in the employment of the employer from whose employment the injury arose, the Corporation must (where it is practicable to do so) notify that employer of the claim.

(8) The Corporation may dispense with a requirement under this section.

(9) A self-insured employer may dispense with the requirement for a certificate under subsection (1)(c) if a claim only relates to Division 2.

(10) In this section—

designated person means—

(a) a recognised health practitioner; or

(b) another person of a prescribed class acting in prescribed circumstances and subject to any limitations or conditions prescribed by the regulations;

prescribed period, in relation to the making of a claim under this section, means the period of 6 months commencing on the day on which the entitlement to make the claim arises.

31—Determination of claim

(1) On receipt of a claim, the Corporation may undertake such investigations and inquiries as are necessary in order to achieve an evidence based decision with respect to the determination of the claim.

(2) Without limiting any other provision, for the purpose of satisfying itself of the nature, extent or probable duration of an injury, the Corporation may require a worker to submit to an examination by a recognised health practitioner nominated by the Corporation.

(3) If a claimant—

(a) fails or refuses to furnish information reasonably required by the Corporation to assess or determine the claim; or

(b) fails or refuses to submit to an examination as required under subsection (2),

the claim may be rejected.

(4) The Corporation must determine claims for compensation as expeditiously as reasonably practicable and where the claim is for compensation by way of income support must, wherever practicable, endeavour to determine the claim within 10 business days after the date of receipt of the claim.

(5) If—

(a) the injury results from a road accident; and

(b) no member of the police force attends at the scene of the accident; and

(c) the claimant is required to report the accident to a member of the police force or at a police station under the *Road Traffic Act 1961*,

the Corporation may refrain from determining the claim until the accident is so reported.

(6) If an employer notifies the Corporation, before the Corporation determines a claim, that the employer disputes that the injury is compensable under this Act, the Corporation must, before determining the claim, make a reasonable investigation into the grounds on which the employer disputes the compensability of the injury.

(7) As soon as practicable after determining a claim the Corporation must give notice in writing of the determination—

(a) to the claimant; and

(b) to any employer who may be directly affected.

(8) If any part of a claim is rejected, a notice under subsection (7) must include—

(a) such information as the regulations may require as to the grounds on which the claim is rejected; and

(b) a statement of the claimant's rights to have the determination reviewed.

(9) The Corporation may, in an appropriate case, by notice in writing to the worker, redetermine a claim.

(10) For the purposes of subsection (9), an appropriate case is one where—

(a) the redetermination is necessary to give effect to an agreement reached between the parties to an application for review or to reflect progress (short of an agreement) made by the parties to such an application in an attempt to resolve questions by agreement; or

(b) the claimant deliberately withheld information that should have been supplied to the Corporation and the original determination was, in consequence, based on inadequate information; or

(c) the redetermination is appropriate by reason of new information that was not available and could not reasonably have been discovered by due enquiry at the time that the original determination was made; or

(d) the redetermination is for the purposes of section 5(11) and is appropriate by reason of the stabilising of a work injury; or

(e) the original determination was made as the result of an administrative error and the redetermination is made within 2 weeks of the making of the original determination.

(11) The redetermination of a claim does not give rise to any right on the part of the Corporation to recover from the worker money paid under a previous determination unless the previous determination was made in consequence of the worker's fraud.

32—Payment of interim benefits

(1) The Corporation may, pending the final determination of a claim, make interim payments under this Part to a claimant.

(2) The Corporation must offer to make interim payments under this section if it fails to determine the relevant claim within 10 business days after the date of receipt of the claim.

(3) If on the final determination of a claim it appears that an amount to which the claimant was not entitled has been paid under this section, the Corporation may recover that amount as a debt in a court of competent jurisdiction.

Division 2—Medical expenses etc

33—Medical expenses

(1) Subject to this section, a worker is entitled to be compensated for costs of services described in subsection (2) that are reasonably incurred by the worker in consequence of having suffered a work injury—

(a) in accordance with a scale published by the Minister under this section; or

(b) if the relevant service is not covered by a scale under this section—to the extent of a reasonable amount for the provision of the service.

(2) The costs referred to in subsection (1) are the necessary costs of:

(a) medical services;

(b) hospitalisation and all associated medical, surgical and nursing services;

(c) approved recovery/return to work services;

(d) travelling, or being transported, to and from any place for the purpose of receiving medical services, hospitalisation or approved recovery/return to work services (but not where the worker travels in a private vehicle);

(e) where it is necessary for the worker to be accommodated away from home for the purpose of receiving medical services or approved recovery/return to work services—such accommodation (but not exceeding limits prescribed by regulation);

(f) attendance by a registered or enrolled nurse, or by some other person approved by the Corporation or of a class approved by the Corporation, where the injury is such that the worker must have nursing or personal attendance;

(g) the provision, maintenance, replacement or repair of therapeutic appliances;

(h) medicines and other material purchased on the prescription or recommendation of a health practitioner;

(i) other services (or classes of services) authorised by the Corporation.

(3) Compensation in respect of costs to which this section applies may be paid—

(a) to the worker; or

(b) directly to the person to whom the worker is liable for those costs.

(4) If a worker has been charged more than the amount that the worker is entitled to claim for the provision of a service in respect of which compensation is payable under this section, the Corporation may reduce the charge by the amount of the excess.

(5) A decision of the Corporation under subsection (4) does not constitute a reviewable decision under Part 6.

(6) If—

(a) services of a kind to which this section applies were provided to a worker in relation to a work injury; and

(b) the Corporation considers that the services were, in the circumstances of the case, unnecessary or unreasonably incurred,

the Corporation may disallow charges for the services.

(7) If the Corporation disallows or reduces a charge under this section—

(a) it must give to the provider of the service a notice setting out—

(i) the basis of the Corporation's decision to disallow or reduce the charge; and

(ii) where the charge has been disallowed under subsection (6) the provider's right to have the decision reviewed under this section; and

(b) the worker is not liable to the provider for the disallowed charge, or for more than the reduced charge, (as the case requires) and, if the worker has in fact paid an amount for which he or she is not liable, the Corporation will reimburse the worker for that amount and may recover it from the provider as a debt.

(8) If a worker travels in a private vehicle to or from any place for the purpose of receiving medical services, hospitalisation or approved recovery/return to work services, and the travel is reasonably necessary in the circumstances of the case, the worker is entitled to a travel allowance at rates fixed by a scale published by the Minister under this section.

(9) A reference in this section to approved recovery/return to work services is a reference to recovery/return to work services provided by a person who has an agreement with the Corporation for the provision of those services.

(10) If a treatment protocol or framework for the provision of services has been published by the Minister under this section, costs for the provision of those services are only compensable where—

(a) the services are provided in accordance with the protocol or framework; or

(b) the provider of the services establishes, to the Corporation's satisfaction, that services outside the terms of the protocol or framework are justified in the circumstances of the particular case.

(11) The amount of compensation for a service covered by a scale of charges published by the Minister under this section must be in accordance with the scale.

(12) The Minister may, by notice in the Gazette, on the recommendation of the Corporation, publish—

(a) scales of charges for the purposes of this section (ensuring as far as practicable that the scales comprehensively cover the various kinds of services to which this section applies);

(b) treatment protocols or frameworks as contemplated by this section.

(13) Subject to subsection (14), a scale of charges published under this section must be based on the average charge to private patients for the relevant service unless the Minister determines that it is not reasonably practicable or feasible to determine such an average charge for a relevant service (but in any event the amount fixed for the service must not exceed the amount recommended by the relevant professional association).

(14) A scale of charges for services provided by a public hospital may be based on government charges for the relevant service.

(15) Before the Corporation makes a recommendation to the Minister about the publishing of a scale of charges, or a treatment protocol or framework, the Corporation must consult with—

(a) professional associations representing the providers of medical services of the relevant kind; and

(b) associations representing self-insured employers (including Self-Insurers of South Australia Incorporated); and

(c) associations representing employers other than self-insured employers (including the South Australian Employers Chamber of Commerce and Industry); and

(d) associations representing employees (including the United Trades and Labor Council).

(16) A person who provides a service for an injured worker, knowing the worker to be entitled to compensation for the service under this section, must not charge for the service an amount exceeding the amount allowed under a scale of charges published under this section.

Maximum penalty: $2 500.

(17) A worker is entitled, in relation to prescribed classes of services, appliances, medicines or materials referred to in subsection (2), to apply to the Corporation for approval to obtain the provision of those services or otherwise to incur costs on the basis that the Corporation will agree in advance to be liable for the relevant costs rather than the worker being required to claim compensation under this section once the costs have been incurred.

(18) An application under subsection (17) must be made in accordance with the regulations and the Corporation must make a decision in relation to the application within the period prescribed by the regulations.

(19) The Corporation must give the same consideration to an application under subsection (17) that would be given to an application if the worker were to incur the relevant costs and then claim compensation under subsection (1).

(20) Subject to subsection (21), an entitlement to compensation under this section (including an entitlement to make an application under subsection (17)) comes to an end if the worker has not had an entitlement to receive weekly payments in relation to the work injury under Division 4 for a continuous period of 12 months (or has not had an entitlement to receive weekly payments under Division 4 and a period of 12 months has expired) (insofar as costs are incurred after the end of that period).

(21) Subsection (20)—

(a) does not apply in relation to a seriously injured worker; and

(b) does not apply—

(i) in relation to any therapeutic appliance required to maintain the worker's capacity; or

(ii) in relation to surgery, any associated medical, nursing or medical rehabilitation services (including the cost of hospitalisation), where the Corporation has determined or accepted, on application made before the end of the period referred to in subsection (20), that it is reasonable and appropriate for such surgery to be undertaken at a later time due to the impact (or likely impact) of the work injury on the worker's health and capacity (or future health and capacity); or

(iii) in relation to prescribed classes of injury, where the Corporation has determined or accepted, on application made before the end of the period referred to in subsection (20), that it is reasonable and appropriate for the services to be provided after the end of that period (and then, in such a case, the services will be compensable to the extent determined by the Corporation); or

(iv) in any other circumstances prescribed by the regulations.

(22) The right of review referred to in subsection (7)(a)(ii) is a right to have the decision of the Corporation to disallow or reduce a charge reviewed by the Tribunal by application to the Tribunal under the *South Australian Employment Tribunal Act 2014*.

34—Transportation for initial treatment

(1) If—

(a) a worker is injured at the worker's place of employment during the course of employment; and

(b) the injury is such as to require immediate medical treatment,

the employer must, at the employer's own expense, provide the worker with immediate transportation to a hospital or health practitioner for initial treatment.

(2) If an employer fails to provide transportation in accordance with subsection (1), the cost may be recovered by the Corporation from the employer as a debt due to the Corporation.

(3) An amount recovered by the Corporation under subsection (2) must, if the worker incurred costs in consequence of the employer's failure to provide transportation, be paid to the worker.

(4) If the cost of transportation provided by an employer (other than a self-insured employer) to a worker in accordance with subsection (1) exceeds an amount prescribed by the regulations, the employer is, on application to the Corporation in a manner and form approved by the Corporation, entitled to recover the excess from the Corporation.

(5) An amount prescribed by regulation under subsection (4) may, if the regulations so provide, be indexed so as to provide annual adjustments according to changes in the CPI.

Division 3—Property damage

35—Property damage

(1) If a worker suffers a work injury and, in consequence of the trauma out of which the injury arose, damage occurs to any therapeutic appliances, clothes, personal effects or tools of trade of the worker, the worker is, subject to limitations prescribed by regulation, entitled to be compensated for the full amount of the damage.

(2) An entitlement under subsection (1) does not extend to compensation for damage to a motor vehicle.

(3) An amount prescribed by regulation under subsection (1) may, if the regulations so provide, be indexed so as to provide annual adjustments according to changes in the CPI.

Division 4—Income support

Subdivision 1—Preliminary

36—Capacity to perform work

(1) For the purposes of this Act, the current work capacity of a worker is constituted by a present inability arising from a work injury such that the worker is not able to return to his or her employment at the time of the occurrence of the injury but is able to return to work in suitable employment.

(2) For the purposes of this Act, a worker has no current work capacity if the worker has a present inability arising from a work injury such that the worker is not able to return to work, either in his or her employment at the time of the occurrence of the injury or in suitable employment.

37—Prescribed benefits

The following are ***prescribed benefits*** for the purposes of this Division:

(a) any amount paid to the worker by the Corporation or a self-insured employer in respect of an employment program provided or arranged by the Corporation or self-insured employer for the purposes of this Act;

(b) any of the following received by the worker from an employer:

(i) any payment, allowance or benefit related to annual or other leave;

(ii) any payment, allowance or benefit paid or conferred by the employer on the worker's retirement;

(iii) any payment, allowance or benefit paid or conferred under a superannuation or pension scheme;

(iv) any payment, allowance or benefit paid or conferred on the retrenchment, or in relation to the redundancy, of the worker;

(c) any other payment, allowance or benefit of a prescribed kind.

38—Prescribed allowances

In this Division, a reference to weekly earnings, or current weekly earnings, is a reference to weekly earnings exclusive of prescribed allowances.

Subdivision 2—Entitlement to weekly payments

39—Weekly payments over designated periods for workers other than seriously injured workers

(1) Subject to this Act, if a worker, other than a seriously injured worker, suffers a work injury that results in incapacity for work, the worker is entitled to weekly payments in respect of that incapacity in accordance with the following principles:

(a) if any period of incapacity for work occurs within the period of 52 weeks from the date on which the incapacity for work first occurs (the ***first designated period***)—

(i) for any period during the first designated period when the worker has no current work capacity—the worker is entitled to weekly payments equal to the worker's notional weekly earnings; and

(ii) for any period during the first designated period when the worker has a current work capacity—the worker is entitled to weekly payments equal to the difference between the worker's notional weekly earnings and the worker's designated weekly earnings;

(b) if any period of incapacity for work occurs within the period of 52 weeks beginning immediately after the end of the period that applies under paragraph (a) (the ***second designated period***)—

(i) for any period during the second designated period when the worker has no current work capacity—the worker is entitled to weekly payments equal to 80% of the worker's notional weekly earnings; and

(ii) for any period during the second designated period when the worker has a current work capacity—the worker is entitled to weekly payments equal to 80% of the difference between the worker's notional weekly earnings and the worker's designated weekly earnings.

(2) For the purposes of this section, the ***designated weekly earnings*** of a worker will be taken to be the current weekly earnings of the worker in employment or self-employment (if any) but not so as to include a prescribed benefit.

(3) A worker has no entitlement to weekly payments under this section in respect of a work injury after the end of the period of 104 weeks from the date on which the incapacity for work first occurs (that is, after the end of the second designated period).

40—Supplementary income support for incapacity resulting from surgery

(1) Subject to this section, an injured worker who has an incapacity for work as a result of surgery approved by the Corporation under section 33(21)(b) is entitled to weekly payments (***supplementary income support payments***) as provided by this section if the incapacity occurs after the end of the second designated period that applies under section 39(1)(b).

(2) Supplementary income support payments are not payable under this section in respect of any period of incapacity that occurs more than 13 weeks after the surgery concerned.

(3) Supplementary income support payments under this section are payable at the rate provided by and in accordance with section 39(1)(b) as if the period of incapacity in respect of which the payments are made occurred during the second designated period subject to any adjustments made under the regulations to take into account—

(a) changes in the CPI; and

(b) any other matter prescribed by the regulations.

41—Weekly payments for seriously injured workers

(1) Subject to this Act, if a seriously injured worker suffers a work injury that results in incapacity for work, the worker is entitled to weekly payments in respect of that incapacity in accordance with the following principles:

(a) if any period of incapacity for work occurs within the period of 52 weeks from the date on which the incapacity for work first occurs (the ***first designated period***)—

(i) for any period during the first designated period when the worker has no current work capacity—the worker is entitled to weekly payments equal to the worker's notional weekly earnings; and

(ii) for any period during the first designated period when the worker has a current work capacity—the worker is entitled to weekly payments equal to the difference between the worker's notional weekly earnings and the worker's designated weekly earnings;

(b) if any period of incapacity for work occurs after the end of the period that applies under paragraph (a)—

(i) for any period when the worker has no current work capacity—the worker is entitled to weekly payments equal to 80% of the worker's notional weekly earnings; and

(ii) for any period when the worker has a current work capacity—the worker is entitled to weekly payments equal to 80% of the difference between the worker's notional weekly earnings and the worker's designated weekly earnings.

(2) For the purposes of subsection (1), the ***designated weekly earnings*** of a worker will be taken to be the current weekly earnings of the worker in employment or self-employment (if any) but not so as to include a prescribed benefit.

(3) If—

(a) a worker is paid weekly payments under subsection (1); and

(b) the worker is subsequently, on account of an assessment of whole person impairment under this Act, determined not to be a seriously injured worker,

the worker will be entitled to continue to receive payments under this section as if the worker were a seriously injured worker until the expiration of 8 weeks from the date of the assessment (and then any further entitlement to weekly payments will be determined on the basis that the worker is not a seriously injured worker and weekly payments paid under this section until then will not be recoverable from the worker).

42—Federal minimum wage safety net

(1) Despite the preceding sections in this Subdivision, if the combined amount that a worker would receive in respect of any incapacity for work in any week applying under any such section would result in the worker receiving less than the Federal minimum wage (adjusted, in the case of a worker who was working at the relevant date on a part-time basis so as to provide a pro-rata payment), the amount of compensation payable under this Subdivision will be increased so that the combined amount equals the Federal minimum wage (or, if relevant, the Federal minimum wage as so adjusted).

(2) For the purposes of this section—

(a) a reference to the combined amount is a reference to the combined total of the amount of compensation that would otherwise be payable under this Subdivision and the amount of the designated weekly earnings of the worker; and

(b) a reference to the relevant date is a reference to the date on which the relevant injury occurs; and

(c) a reference to a worker who is working on a part-time basis will be determined after taking into account the usual work patterns of workers in employment of the kind in which the worker was working at the relevant date.

(3) The component of the relevant amount under subsection (1) that is constituted by the Federal minimum wage will be adjusted from time to time to reflect changes to the wages applying under a national minimum wage order under Part 2-6 of the *Fair Work Act 2009* of the Commonwealth in accordance with a scheme prescribed by the regulations.

43—Return to work obligations of worker

(1) A worker who has current work capacity must, in cooperation with the employer or Corporation, make reasonable efforts to return to work in suitable employment or pre-injury employment at the worker's place of employment or at another place of employment.

(2) For the purposes of this section, a worker is to be treated as making a reasonable effort to return to work in suitable employment or pre-injury employment during any reasonable period in which—

(a) the worker is waiting for the commencement of any recovery/return to work services that are required to be provided under a recovery/return to work plan for the worker; or

(b) the worker is waiting for a response to a request for suitable employment or pre-injury employment made by the worker and received by the employer; or

(c) if the employer's response is that suitable employment or pre-injury employment will be provided at some time, the worker is waiting for suitable employment or pre-injury employment to commence.

44—Termination of weekly payments on retiring age

(1) In this section—

retiring age means—

(a) if there is a normal retiring age for workers in employment of the kind from which the worker's injury arose—that age; or

(b) the age at which the worker would, subject to satisfying any other qualifying requirements, be eligible to receive an age pension under the *Social Security Act 1991* of the Commonwealth,

whichever is the lesser.

(2) Weekly payments are not payable under this Division in respect of a period of incapacity for work falling after the date on which the worker reaches his or her retiring age.

(3) However, if a worker who is within 2 years of his or her retiring age or above his or her retiring age becomes incapacitated for work while still in employment, weekly payments are payable for any period of incapacity falling within 104 weeks after the date on which the incapacity for work first occurred (unless suspended, reduced or discontinued under another provision of this Act and subject to any other relevant provision).

Subdivision 3—Adjustment of weekly payments

45—Adjustments due to change from original arrangements

(1) The Corporation may, on its own initiative or at the request of the worker, review the calculation of the average weekly earnings of a worker (and therefore the notional weekly earnings of a worker) for the purpose of making an adjustment due to—

(a) a change in a component of the worker's remuneration used to determine average weekly earnings (including a component constituted by a non-cash benefit); or

(b) a change in the equipment or facilities provided or made available to the worker (if relevant to average weekly earnings).

(2) A request by a worker must be made in a designated manner and a designated form.

(3) Before the Corporation begins a review under this section, the Corporation must give the worker notice, in a designated form—

(a) informing the worker of the proposed review; and

(b) inviting the worker to make written representations to the Corporation on the subject of the review within a reasonable time specified in the notice.

(4) If the Corporation finds on a review under this section that there has been a change that warrants an adjustment contemplated by subsection (1), the Corporation may make the relevant adjustment.

(5) An adjustment under this section—

(a) will take effect as an adjustment to the worker's notional weekly earnings (and may therefore increase or reduce weekly payments under this Division); and

(b) operates from a date determined by the Corporation (which may be an antecedent date but not a date that is before the date of the change on which the adjustment is based and not so as to result in a retrospective reduction in weekly payments).

(6) For the purposes of a review under this section, the Corporation may, by notice in writing to the worker to whom the review relates, require the worker to furnish any information that the Corporation determines to be relevant to the review.

(7) If a worker fails to comply with a requirement under subsection (6) within the time allowed in the notice, the Corporation may suspend weekly payments to the worker.

(8) On completing the review, the Corporation must give notice, in a designated form, setting out the Corporation's decision on the review, and the rights of review that exist in respect of the decision to—

(a) the worker; and

(b) the employer from whose employment the compensable injury arose.

(9) This section does not limit the powers of the Corporation under any other section of this Act.

46—Review of weekly payments

(1) Subject to subsection (3), the Corporation may, on its own initiative and must if requested by a worker or an employer, review the amount of the weekly payments made to a worker who has suffered a work injury.

(2) A request by a worker or employer must be made in a designated manner and a designated form.

(3) The Corporation is not required to comply with a request for a review under subsection (1) if the request is made within 3 months from the completion of an earlier review.

(4) Before the Corporation begins a review under this section, the Corporation must give the worker notice, in a designated form—

(a) informing the worker of the proposed review; and

(b) inviting the worker to make written representation to the Corporation on the subject of the review within a reasonable time specified in the notice.

(5) If the Corporation finds on a review under this section that the worker's entitlement to weekly payments has ceased, or has increased or decreased, the Corporation must adjust or discontinue the weekly payments to reflect that finding.

Example—

For example, if the Corporation finds on the review that there has been a change in the extent of the worker's incapacity with a consequent change in the amount the worker is earning or could earn in suitable employment, the Corporation must adjust the weekly payments to reflect the change in entitlement.

(6) For the purposes of a review under this section, the Corporation may, by notice in writing to a worker, who is receiving weekly payments—

(a) require the worker to submit to an examination by a recognised health practitioner nominated by the Corporation; or

(b) require the worker to furnish evidence of the worker's earnings.

(7) If a worker fails to comply with a requirement under subsection (6) within the time allowed in the notice, the Corporation may suspend weekly payments to the worker.

(8) On completing the review, the Corporation must give notice, in a designated form, setting out the Corporation's decision on the review, and the rights of review that exist in respect of the decision, to—

(a) the worker; and

(b) the employer from whose employment the work injury arose.

(9) This section does not limit the powers of the Corporation under any other section of this Act.

47—Economic adjustments to weekly payments for seriously injured workers

(1) If a seriously injured worker is incapacitated for work or appears likely to be incapacitated for work for more than 1 year, the Corporation must, during the course of each year of incapacity, review the weekly payments for the purpose of making an adjustment to the amount of those payments under this section.

(2) Before the Corporation begins a review under this section, the Corporation must give the worker notice, in a designated form—

(a) informing the worker of the proposed review; and

(b) inviting the worker to make written representations to the Corporation on the subject of the review within a reasonable time specified in the notice.

(3) An adjustment under this section—

(a) must be based on—

(i) changes in the rates of remuneration payable to workers generally or to workers engaged in the kind of employment from which the worker's injury arose; or

(ii) if the worker applies, in a designated manner and a designated form, for the adjustment to be made on the basis of changes in rates of remuneration prescribed by an award or enterprise agreement payable to a group of workers of which the worker was a member at the time of the occurrence of the injury—changes in those rates of remuneration; and

(b) operates—

(i) in the case of an adjustment under paragraph (a)(i)—from the end of the year of incapacity in which the review is made;

(ii) in the case of an adjustment under paragraph (a)(ii)—from the Corporation's decision on the application, back-dated to the date of the relevant changes in rates of remuneration.

(4) If the Corporation makes an adjustment to weekly payments under this section, the Corporation must give notice in writing, in a designated form, to the worker—

(a) containing such information as the regulations may require as to the grounds on which the adjustment is being made; and

(b) informing the worker of the worker's rights to have the Corporation's decision reviewed.

Subdivision 4—Reduction or discontinuance of weekly payments

48—Reduction or discontinuance of weekly payments

(1) Subject to this Act, weekly payments to a worker who has suffered a work injury must not be reduced unless—

(a) the worker consents to the reduction of weekly payments; or

(b) the Corporation is satisfied, on the basis of a certificate of a recognised health practitioner, that there has been a reduction in the extent the worker is incapacitated for work by the work injury; or

(c) the reduction is necessary to correct an arithmetical or clerical error; or

(d) if the weekly payments include a component for overtime—the Corporation is satisfied that if the worker had continued in the work in which he or she was last employed before becoming incapacitated, he or she would not have continued to work overtime or the pattern of overtime would have changed so that the amount of overtime would have diminished; or

(e) the worker has recommenced work as an employee or as a self-employed contractor, or the worker has had an increase in remuneration as an employee or a self-employed contractor; or

(f) the worker's entitlement to weekly payments reduces because of the passage of time; or

(g) the worker's entitlement to weekly payments reduces because of the occurrence of some other event or the making of some other decision or determination that, under another provision of this Act, is expressed to result in a reduction to an entitlement to weekly payments or the reduction of weekly payments is otherwise authorised or required under another provision of this Act.

(2) Subject to this Act, weekly payments to a worker who has suffered a work injury must not be discontinued unless—

(a) the worker consents to the discontinuance of weekly payments; or

(b) the Corporation is satisfied, on the basis of a certificate of a recognised health practitioner, that the worker has ceased to be incapacitated for work by the work injury; or

(c) the worker has returned to work; or

(d) the worker has obtained work as an employee, or as a self-employed contractor, that is providing remuneration equal to or above the worker's notional weekly earnings; or

(e) the worker is dismissed from employment for serious and wilful misconduct; or

(f) the worker breaches the obligation of mutuality; or

(g) the worker is, without the Corporation's consent—

(i) residing outside the State; or

(ii) absent from the State for more than 2 months in any continuous period of 12 months; or

(h) the worker's entitlement to weekly payments ceases because of the passage of time; or

(i) the worker's entitlement to weekly payments ceases because of the occurrence of some other event or the making of some other decision or determination that, under another provision of this Act, brings the entitlement to weekly payments to an end or the discontinuance of weekly payments is otherwise authorised or required under another provision of this Act.

(3) A worker breaches the ***obligation of mutuality*** if—

(a) the Corporation has, by written notice to the worker, required the worker to submit to an examination by a recognised health practitioner nominated by the Corporation and the worker fails to comply with the requirement within the time allowed in the notice or obstructs the examination; or

(b) the Corporation has, by written notice to the worker, required the worker to submit to the Corporation a certificate from a recognised health practitioner certifying that the work injury continues, and the worker fails to comply with the requirement within the time allowed in the notice; or

(c) the worker refuses or fails to submit to proper medical treatment for the worker's condition; or

(d) the worker refuses or fails—

(i) to participate or cooperate in the establishment of a recovery/return to work plan for the worker; or

(ii) to comply with obligations imposed on the worker by or under a recovery/return to work plan for the worker; or

(e) the worker refuses or fails—

(i) to undertake work that the worker has been offered and is capable of performing; or

(ii) to take reasonable steps to find or obtain suitable employment or to comply with any other return to work obligation placed on the worker under this Act,

or having obtained suitable employment, unreasonably discontinues the employment; or

(f) the worker refuses or fails to participate in assessments of the worker's capacity, return to work progress or future employment prospects (including by failing to attend); or

(g) the worker does anything else that is, apart from this subsection, recognised as a breach of the obligation of mutuality.

(4) However, a worker does not breach the obligation of mutuality—

(a) by reasonably refusing surgery or the administration of a drug; or

(b) where there is a difference of medical opinion about the appropriate treatment for the worker's condition, or the possibility of choice between a number of reasonable forms of treatment—by choosing 1 form of treatment in preference to another.

(5) Where the Corporation decides to reduce or discontinue weekly payments under this section, the Corporation must give notice in writing to the worker—

(a) containing such information as the regulations may require as to the reasons for the Corporation's decision; and

(b) informing the worker of the worker's right to have the decision reviewed.

(6) The notice must be given at least the prescribed number of days before the decision is to take effect in any of the following cases:

(a) where a decision to reduce weekly payments is made, without the consent of the worker, on the ground that—

(i) the Corporation is satisfied that there has been a reduction in the extent the worker is incapacitated for work by the work injury; or

(ii) the Corporation is satisfied, in the case of a worker whose weekly payments include a component for overtime, that the worker would not have continued to work overtime or the pattern of overtime would have changed so that the amount of overtime would have diminished;

(b) where a decision to discontinue weekly payments is made, without the consent of the worker, on the ground that—

(i) the Corporation is satisfied that the worker has ceased to be incapacitated for work by the work injury (although the worker has not returned to work); or

(ii) the worker has failed to submit to an examination by a recognised health practitioner or to provide a medical certificate as required by the Corporation; or

(iii) the worker has been dismissed from employment for serious and wilful misconduct; or

(iv) the worker has breached the obligation of mutuality;

(c) where a decision to reduce or discontinue weekly payments is made under section 46,

and in any other case the notice must be given as soon as practicable after the decision is made (but not necessarily before it takes effect).

(7) For the purposes of subsection (6), the prescribed number of days is—

(a) if the worker's entitlement to weekly payments relates to a period that is within 52 weeks from the date on which incapacity for work first occurred—14 days;

(b) in any other case—28 days.

(8) Subject to complying with subsection (6), a reduction or discontinuance of weekly payments under this section takes effect in accordance with the terms of the Corporation's notice under subsection (5).

(9) Subject to subsection (10), if a worker, within 1 month after the worker receives notice of a decision by the Corporation to reduce or discontinue weekly payments under this section, makes application to the Tribunal for a review of the decision and, as part of that application, makes an election under this subsection—

(a) the operation of the decision is suspended and—

(i) the weekly payments must continue or, if the decision has already taken effect, the weekly payments must be reinstated (to their previous level), until the matter first comes before a member of the Tribunal; and

(ii) the Corporation must make a payment to the worker for any weekly payments that have not been made between the date that the decision took effect and the date of their reinstatement; and

(b) the Tribunal may as it thinks fit and from time to time, and after having regard to the nature and circumstances of the case—

(i) further suspend the operation of the decision (from time to time) to allow a reasonable opportunity for resolution of the dispute by conciliation or determination if such action is reasonably necessary in order to avoid undue financial hardship being suffered by the worker and subject to the principle that the Tribunal should give extra weight to taking action under this subparagraph if it appears to the Tribunal that it is reasonably open to the worker to dispute the relevant decision;

(ii) vary or revoke a decision under subparagraph (i), including so as to provide that weekly payments will only continue, or continue at a reduced rate, if the worker complies with conditions determined by the Tribunal;

(iii) make an order for the payment of an amount to represent some or all of any weekly payments that have not been made to the worker during the period of the dispute.

(10) Weekly payments are not payable under subsection (9) after the end of the period of 104 weeks from the date on which the relevant incapacity for work first occurs (other than in the case of a seriously injured worker and not, in any event, so as to go beyond a date where the weekly payments would come to an end in any event under another provision of this Act).

(11) If a dispute is resolved in favour of the worker, the worker is entitled to be paid the amount that, subject to or according to the resolution of the matter, would have constituted the worker's entitlements under this Act had the weekly payments not been reduced or discontinued (as the case may be), after taking into account any amount paid under subsection (9), or under another provision of this Act.

(12) An amount paid under subsection (11) will be increased by interest at the prescribed rate.

(13) If a dispute is ultimately resolved in favour of the Corporation and the worker has been paid an amount in excess of the amount of the worker's lawful entitlements to weekly benefits on account of the operation of subsection (9), the Corporation may, at the Corporation's discretion (but subject to the regulations)—

(a) recover the amount of the excess (together with any interest on that amount paid by the Corporation) from the worker as a debt; or

(b) set off the amount recoverable under paragraph (a) against liabilities of the Corporation to make payments to the worker under this Act.

(14) If the Corporation makes a weekly payment to a worker on the assumption that the worker is incapacitated for work but the worker has in fact returned to work, the Corporation may, subject to the regulations, recover the amount of the payment as a debt.

(15) If the Corporation overpays a worker by way of weekly payments in consequence of—

(a) an arithmetical or clerical error; or

(b) an assumption, subsequently found to be incorrect, that a particular pattern of overtime would have continued if the worker had continued in the work in which he or she was last employed before becoming incapacitated,

the Corporation may, subject to and in accordance with the regulations, recover the amount overpaid as a debt.

(16) An employer who believes that reasonable grounds exist for the reduction or discontinuance of weekly payments under this section to a worker employed by, or formerly employed by, the employer may, in a manner determined by the Corporation, request the Corporation to review the circumstances of the case and to reduce or discontinue the weekly payments.

(17) The Corporation must carry out the review as soon as practicable after receipt of a request under subsection (16) unless the request is, in the Corporation's opinion, unreasonable.

(18) If the Corporation declines to carry out a review as requested under subsection (16), or it appears that there has been undue delay in carrying out the review, the Tribunal may, on application by the employer, direct the Corporation to carry out the review, or give such directions as appear reasonable in the circumstances to expedite the review (as the case may require).

(19) The Corporation must comply, or take steps to ensure compliance, with such a direction.

(20) On completing the review, the Corporation must give the employer notice in writing—

(a) of the Corporation's decision on the review, and the reasons for its decision; and

(b) of the employer's right to have the Corporation's decision reviewed.

(21) This section does not apply in relation to the discontinuance of payments under Division 5 of this Part or Part 5 (and in such a case no notice of discontinuance need be given).

(22) In connection with the operation of subsection (2) (and to avoid doubt), a worker is required to take reasonable steps to attend any appointment reasonably required for the purposes of this Division (and a failure to comply with such a requirement constitutes a ground for the discontinuance of payments under this section).

Subdivision 5—Related matters

49—Protection from excess payments

(1) A worker is not entitled under this Division to receive, in respect of 2 or more injuries, weekly payments in excess of the worker's notional weekly earnings.

(2) If a liability to make weekly payments is redeemed (whether under this Act or the repealed Act), the worker is taken, for the purposes of this Act, to be receiving the weekly payments that would have been payable if there had been no redemption.

(3) If a liability to make weekly payments is discharged under a deed of release under section 66(7), the injured party (within the meaning of that section) is taken, for the purposes of this Division, to be receiving the weekly payments that would have been payable if the deed of release had not been entered into.

50—Weekly payments and leave entitlements

(1) Subject to this section, neither the liability to make weekly payments to a worker in respect of a period of incapacity nor the amount of such weekly payments is affected by a payment, allowance or benefit for annual leave or long service leave to which the worker is entitled in respect of that period.

(2) If a worker is absent from employment in consequence of a work injury, the period of absence must for the purposes of computing the worker's entitlement to annual leave or sick leave under any Act, award or industrial agreement, be counted as a period of service in the worker's employment.

(3) If a worker has received weekly payments in respect of total incapacity for work over a period of 52 weeks or more, the liability of the employer to grant annual leave to the worker in respect of a year of employment that coincides with, or ends during the course of, that period will be taken to have been satisfied.

(4) Subsection (3) does not affect the obligation of an employer to make a payment in the nature of an annual leave loading.

(5) If—

(a) the entitlement of a worker to annual leave, or payment in lieu of annual leave, is governed by a law of the Commonwealth or a State or Territory of the Commonwealth (not being this State); and

(b) the worker is absent from employment in consequence of a work injury; and

(c) the period of absence is not taken into account as service for the purpose of calculating the worker's entitlement to annual leave or payment in lieu of annual leave,

the worker is entitled by way of compensation to the monetary value of the annual leave that would have accrued if the worker had not been absent from employment.

(6) Any compensation payable under subsection (5) must be paid when the annual leave, or the payment in lieu of annual leave, would (assuming that the worker had not been absent from employment) have been granted or made.

(7) If a worker applies for, and takes, a period of annual leave, the Corporation may suspend weekly payments that would otherwise be payable to the worker during the period while the worker is on leave.

(8) A decision of the Corporation under subsection (7) does not constitute a reviewable decision under Part 6.

51—Absence of worker from Australia

(1) If a worker who has suffered a work injury and who is receiving weekly payments under this Division is to be absent from Australia for a period in excess of 28 days, the worker must, at least 28 days before leaving Australia, give the Corporation prescribed details of the proposed absence.

(2) If the Corporation is of the opinion that the absence may impair the prospects of the worker's recovery or return to work, it may, after giving the worker at least 14 days notice, in a designated form, of its intention to do so, suspend or reduce the weekly payments to the worker.

(3) The Corporation may suspend weekly payments that are being made to a worker who is absent from Australia—

(a) if the Corporation cannot obtain, to its satisfaction, information relating to—

(i) the whereabouts of the worker; or

(ii) the continuance of the worker's injury or incapacity for work; or

(iii) the earning capacity of the worker; or

(b) if there is, in the opinion of the Corporation, some other proper reason justifying suspension of the weekly payments.

(4) If an injured worker leaves Australia without giving the notice required under subsection (1), the Corporation may suspend weekly payments to the worker.

52—Reports of return to work etc

(1) An employer (other than a self-insured employer) must notify the Corporation whenever—

(a) a worker who has been receiving weekly payments for total incapacity returns to work; or

(b) there is a change in the weekly earnings of a worker who is receiving weekly payments for partial incapacity; or

(c) there is a change in the type of work performed by a worker who is receiving weekly payments for partial incapacity,

(but notification is not required in a case or class of cases excepted by the Corporation from the operation of this subsection).

(2) If a worker who has been receiving weekly payments for total incapacity returns to work with an employer other than the employer from whose employment the injury arose, the worker must notify that previous employer of the return to work.

(3) A notification under subsection (1) or (2)—

(a) must be given within 14 days of the occurrence of the notifiable event; and

(b) must include full particulars of the notifiable event.

(4) A person who without reasonable excuse fails to comply with this section is guilty of an offence.

Maximum penalty: $1 500.

Division 5—Redemptions

53—Redemptions—liabilities associated with weekly payments

(1) A liability to make weekly payments under Division 4 may, by agreement between the worker and the Corporation, be redeemed by a capital payment to the worker.

(2) An agreement for the redemption of a liability under this section cannot be made unless—

(a) the worker has received competent professional advice about the consequences of redemption; and

(b) the worker has received competent financial advice about the investment or use of money to be received on redemption; and

(c) the Corporation has consulted with the employer out of whose employment the injury arose and has considered any representations made by the employer; and

(d) a recognised health practitioner has certified that the extent of the worker's incapacity resulting from the work injury can be determined with a reasonable degree of confidence.

(3) The amount of the redemption payment is to be fixed by the agreement.

(4) If the Corporation notifies a worker in writing that it is prepared to enter into negotiations for the redemption of a liability by agreement under this section, the Corporation is liable to indemnify the worker for reasonable costs of obtaining the advice required under this section up to a limit prescribed by regulation.

(5) In the case of a seriously injured worker, this section applies subject to any election made by the worker under Part 5 Division 1.

(6) The following decisions are not reviewable:

(a) a decision of the Corporation not to agree to a redemption under this section;

(b) a decision on the amount of a redemption.

54—Redemptions—liabilities associated with medical services

(1) In this section—

designated liability means—

(a) a liability to make payments under section 33 in relation to a work injury suffered by a worker; and

(b) in association with a liability under paragraph (a) (if relevant), a liability to make weekly payments under section 40.

(2) This section applies (and only applies) in relation to workers who are not seriously injured workers.

(3) A designated liability may, by agreement between the worker and the Corporation, be redeemed by a capital payment to the worker.

(4) An agreement for the redemption of a liability under this section cannot be made unless—

(a) the worker has received competent professional advice about the consequences of redemption; and

(b) the worker has received advice from a recognised health practitioner about the future medical services (and, if relevant, therapeutic appliances and other forms of assistance related to his or her future health) that the worker will or is likely to require on account of the work injury and any related surgery, treatment or condition.

(5) The amount of the redemption payment is to be fixed by the agreement.

(6) If the Corporation notifies a worker in writing that it is prepared to enter into negotiations for the redemption of a liability by agreement under this section, the Corporation is liable to indemnify the worker for reasonable costs of obtaining the advice required under this section up to a limit prescribed by regulation.

(7) The following decisions are not reviewable:

(a) a decision of the Corporation not to agree to a redemption under this section;

(b) a decision on the amount of a redemption.

Division 6—Permanent impairment—economic loss

55—Preliminary

(1) In this section—

relevant date means the relevant date, as it applies in relation to a worker, under section 5.

(2) For the purposes of this Division, the ***age factor*** is the percentage that applies in relation to an injured worker under Schedule 6 (subject to the operation of subsection (3)).

(3) For the purposes of Schedule 6, the relevant age of the worker is the worker's age at the relevant date.

(4) For the purposes of this Division, the ***hours worked factor*** is the number of hours per week being worked by the worker (whether full-time or part-time) at the relevant date, expressed as a percentage of full-time work.

(5) For the purposes of subsection (4) (but subject to subsections (6) and (7)), what constitutes full-time or part-time work must be consistent with the determinations made under section 5 in relation to the worker.

(6) If by reason of the worker's circumstances on the relevant date it is not possible to arrive at a fair determination under subsection (4), the Corporation may apply such factors as it thinks appropriate to arrive at a fair determination of the number of hours per week that will apply for the purposes of this Division.

(7) Furthermore, if in relation to a worker who was working part-time at the relevant date there is evidence that, at the relevant date, the worker had a legally enforceable right to return to full-time work, the hours worked factor applying in relation to the worker will be based on full-time work.

(8) For the purposes of this Division, the ***prescribed sum*** is the amount applying under Schedule 7 in relation to a worker's whole person impairment.

(9) In connection with the operation of subsection (8), the amount to be applied with respect to a particular injury is the amount applying under Schedule 7 at the relevant date.

56—Lump sum payments—economic loss

(1) Subject to this Act, if a worker, other than a seriously injured worker, suffers a work injury resulting in permanent impairment as assessed under Part 2 Division 5, the worker is entitled (in addition to any entitlement apart from this section) to compensation for loss of future earning capacity by way of a lump sum.

(2) An entitlement does not arise under this section if the worker's degree of whole person impairment from physical injury is less than 5%.

(3) An entitlement does not arise under this section in relation to—

(a) a psychiatric injury or consequential mental harm; or

(b) noise induced hearing loss.

(4) Subject to this section, the lump sum will be an amount determined as follows:

$$LS = PS \times AF \times HWF$$

where

LS is the lump sum

PS is the prescribed sum that applies in relation to the worker's whole person impairment

AF is the age factor applying in relation to the injured worker

HWF is the hours worked factor applying in relation to the injured worker.

(5) If a worker suffers 2 or more work injuries arising from the same trauma, the injuries may together be treated as 1 injury to the extent set out in the Impairment Assessment Guidelines (and assessed together using any combination or other principle set out in the Impairment Assessment Guidelines).

(6) If—

(a) a worker suffers a work injury that gives rise to an entitlement under this section; and

(b) the worker subsequently suffers—

(i) an aggravation, acceleration, exacerbation, deterioration or recurrence of the injury referred to in paragraph (a); or

(ii) a new work injury,

and the worker, as a result, has a second entitlement under this section,

there will be a reduction of the lump sum payable under this section in respect of the second entitlement by the amount of the payment for the earlier entitlement unless such a reduction is incorporated into the provisions of the Impairment Assessment Guidelines (and then this subsection will apply in relation to any third or subsequent entitlement in the same way in order to ensure that each lump sum previously paid is taken into account as new entitlements arise).

(7) For the purposes of this section, any degree of impairment will be assessed in accordance with Part 2 Division 5 (and the Impairment Assessment Guidelines).

(8) Only 1 claim may be made under this Division in respect of any impairment or impairments that result from 1 or more injuries (including consequential injuries) arising from the same trauma (and any injury that may subsequently manifest itself or develop after the assessment of impairment is made will not be compensable).

(9) Subsection (8) does not apply in any circumstances prescribed by the regulations.

(10) Compensation is not payable under this section after the death of the worker concerned.

(11) In the operation of this section, in no case can the lump sum exceed the prescribed sum adjusted by the age factor.

Division 7—Permanent impairment—non-economic loss

57—Prescribed sum

(1) For the purposes of this Division, the ***prescribed sum*** is—

(a) unless a regulation has been made under paragraph (b)—$472 000 (indexed); or

(b) a greater amount prescribed by regulation for the purposes of this definition.

(2) In connection with the operation of subsection (1)—

(a) the amount to be applied with respect to a particular injury is the amount applying under that subsection at the time of the occurrence of that injury; and

(b) an amount prescribed by regulation under paragraph (b) of that subsection must be indexed so as to provide annual adjustments according to changes in the CPI.

58—Lump sum payments—non-economic loss

(1) Subject to this Act, if a worker suffers a work injury resulting in permanent impairment as assessed under Part 2 Division 5, the worker is entitled (in addition to any entitlement apart from this section) to compensation for non-economic loss by way of a lump sum.

(2) An entitlement does not arise under this section if the worker's degree of whole person impairment from physical injury is less than 5%.

(3) An entitlement does not arise under this section in relation to a psychiatric injury or consequential mental harm.

(4) Subject to this section, the lump sum will be an amount that represents a portion of the prescribed sum calculated in accordance with the regulations.

(5) Regulations made for the purposes of subsection (4) must provide for compensation that at least satisfies the requirements of Schedule 8 taking into account the assessment of whole person impairment undertaken for the purposes of this Division.

(6) If a worker suffers 2 or more work injuries arising from the same trauma—

(a) the injuries may together be treated as 1 injury to the extent set out in the Impairment Assessment Guidelines (and assessed together using any combination or other principle set out in the Impairment Assessment Guidelines); and

(b) the worker is not entitled to receive compensation by way of lump sum under subsection (4) in respect of those injuries in excess of the prescribed sum.

(7) If—

(a) a work injury consists of the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior work injury; and

(b) compensation by way of lump sum has been previously paid under this section, or a corresponding previous enactment,

there will be a reduction of the lump sum payable under this section in respect of the injury by the amount of the previous payment unless such a reduction is incorporated into the provisions of the Impairment Assessment Guidelines.

(8) For the purposes of this section, any degree of impairment will be assessed in accordance with Part 2 Division 5 (and the Impairment Assessment Guidelines).

(9) Only 1 claim may be made under this Division in respect of any impairment or impairments that result from 1 or more injuries (including consequential injuries) arising from the same trauma (and any injury that may subsequently manifest itself or develop after the assessment of impairment is made will not be compensable).

(10) Subsection (9) does not apply in any circumstances prescribed by the regulations.

(11) Compensation is not payable under this section after the death of the worker concerned.

Division 8—Payments on death

59—Weekly payments

(1) Subject to this Act, if a worker dies as a result of a work injury, compensation in the form of weekly payments is payable as follows:

(a) a dependent spouse or domestic partner is entitled to weekly payments equal to—

(i) in the case of total dependency—50%;

(ii) in the case of partial dependency—such lesser percentage as may be fixed by the Corporation having regard to the extent of the dependency,

of the amount of the notional weekly earnings of the deceased worker;

(b) a dependent child (being an orphaned child) is entitled to weekly payments equal to—

(i) in the case of total dependency—25%;

(ii) in the case of partial dependency—such lesser percentage as may be fixed by the Corporation having regard to the extent of the dependency,

of the amount of the notional weekly earnings of the deceased worker;

(c) a dependent child (not being an orphaned child) is entitled to weekly payments equal to—

(i) in the case of total dependency—12.5%;

(ii) in the case of partial dependency—such lesser percentage as may be fixed by the Corporation having regard to the extent of the dependency,

of the amount of the notional weekly earnings of the deceased worker;

(d) a dependent relative (not being a spouse, domestic partner or child) is entitled to such compensation by way of weekly payments as may be determined by the Corporation having regard to—

(i) the extent of the relative's dependency on the deceased worker;

(ii) the earning capacity of the relative;

(iii) the relative's means;

(iv) the extent of any other benefits provided under this Act in respect of the worker's death.

(2) For the purposes of subsection (1), if a worker and the worker's spouse or domestic partner jointly contributed to the support of a dependent child immediately before the occurrence of the work injury that resulted in the worker's death, any contribution to the support of the child from the worker's spouse or domestic partner will be disregarded in determining whether the child is a dependant and, if so, the extent of the child's dependency.

(3) If—

(a) a worker dies leaving a spouse or domestic partner and a dependent child; and

(b) the spouse or domestic partner subsequently dies,

the child (if still eligible to receive weekly payments under this section) will then be entitled to receive weekly payments under subsection (1)(b) as an orphaned child.

(4) Compensation is payable, if the Corporation so decides, to a spouse or domestic partner or child of a deceased worker who, although not dependent on the worker at the time of the worker's death, suffers a change of circumstances that may, if the worker had survived, have resulted in the spouse or domestic partner or child becoming dependent on the worker.

(5) Weekly payments will not be made to a dependent child under this section unless—

(a) the child is under the age of 18 years; or

(b) the child is a full-time student at an educational institution approved by the Corporation for the purposes of this paragraph and is under the age of 26 years; or

(c) the child is, by reason of disability, incapable of earning a living.

(6) Weekly payments will not be paid under this section beyond the date at which such payments would, assuming that the worker had survived but had been a seriously injured worker, have ceased to be payable to the worker.

(7) If weekly payments payable under this section would, but for this subsection, exceed in aggregate the amount of the weekly payments to which the worker would have been entitled in the event of being a seriously injured worker with no current work capacity, the weekly payments must be proportionately reduced so as not to exceed that amount.

(8) If a person who is entitled to a payment under this section is under the age of 18 years, the payment may, if the Corporation so determines, be made wholly or in part to a guardian or trustee for the benefit of that person.

(9) Subject to subsection (10), if the child of a deceased worker who is entitled to weekly payments under this section is under the age of 18 years and is in the care of a person other than a dependent spouse or domestic partner of the worker, that person will, if the Corporation so determines, be entitled to a supplementary allowance to assist in the care of the child until—

(a) the child attains the age of 18 years; or

(b) the person ceases to have the care of the child,

whichever first occurs.

(10) If a child is by reason of a disability incapable of earning a living, the Corporation may pay a supplementary allowance under subsection (9) during the period of that incapacity even though the child has attained the age of 18 years.

(11) A liability to make weekly payments under this section may, on application by the person entitled to the weekly payments, be commuted to a liability to make a capital payment that is actuarially equivalent to the weekly payments.

(12) However, the liability may only be commuted if the actuarial equivalent of the weekly payments does not exceed the prescribed sum applying under Division 7.

(13) The Corporation has (subject to this section) an absolute discretion to make or not to make a commutation under this section, and the Corporation's decision to make or not to make a commutation is not reviewable (but a decision on the amount of a commutation is reviewable).

(14) If the Corporation decides to make a commutation and makes an offer under this section, the Corporation cannot, without the agreement of the applicant, subsequently revoke its decision to make the commutation.

(15) In calculating the actuarial equivalent of weekly payments, the principles (and any discount, decrement or inflation rate) prescribed by regulation must be applied.

(16) A commutation discharges the Corporation's liability to make weekly payments to which the commutation relates.

(17) In this section—

disability means any physical, mental or intellectual disability.

60—Review of weekly payments

(1) The Corporation may on its own initiative and must if requested by an employer or the person to whom weekly payments are payable, review the amount of weekly payments payable to any person under this Division.

(2) A request for a review of the amount of weekly payments payable under this Division may not be made within 6 months from the completion of an earlier review.

(3) The amount of the weekly payments payable under this Division must be reviewed at least once in each year.

(4) On a review under this section the Corporation must make any adjustments to the amount of weekly payments—

(a) to reflect changes in the income from employment or earning capacity of the person to whom the weekly payments are payable and any other relevant changes in the circumstances of that person but in any event not so as to take into account income derived from the investment of a lump sum paid to the person under this Division; and

(b) if the review is an annual review conducted under subsection (3)—to reflect changes in the rates of remuneration payable to workers generally or to workers engaged in the kind of employment from which the worker's injury arose.

(5) For the purposes of a review under this section, the Corporation may, by notice in writing to a person who is receiving weekly payments under this Division, require that person to produce evidence to the satisfaction of the Corporation of—

(a) income from employment;

(b) earning capacity;

(c) any other circumstances that are relevant to the payment, or the amount, of weekly benefits.

(6) If a person fails to comply with a requirement under subsection (5) within the time allowed in the notice, the Corporation may suspend weekly payments to that person.

(7) If the Corporation proposes the reduction of weekly payments to a person on a review under this section the Corporation must, at least 21 days before the proposal is to take effect, give notice in writing to the person—

(a) containing such information as the regulations may require as to the grounds on which weekly payments are to be reduced; and

(b) informing the person of the person's rights to have the Corporation's decision reviewed.

61—Lump sums

(1) In this section—

child means a person who—

(a) is under the age of 18 years; or

(b) is a full-time student at an educational institution approved by the Corporation for the purposes of this paragraph and is under the age of 26 years; or

(c) is, by reason of disability, incapable of earning a living;

disability means any physical, mental or intellectual disability;

partner means a spouse or domestic partner;

prescribed sum means the prescribed sum applying under Division 7 (as at the time of the occurrence of the work injury that resulted in the death of the relevant worker) but less any amount paid to the relevant worker under Division 7, or a corresponding previous enactment.

(2) Subject to this Act, if a worker dies as a result of a work injury, compensation in the form of a lump sum is payable in accordance with this section.

(3) If the worker leaves a partner or partners, and no child, the amount of compensation is an amount equal to the prescribed sum payable to the partner or, if there is more than 1 partner, an amount payable to each partner determined by dividing the prescribed sum into equal shares.

(4) If the worker leaves no partner and a child or children, the amount of compensation is an amount equal to the prescribed sum payable to the child or, if there is more than 1 child, an amount payable to each child determined by dividing the prescribed sum into equal shares.

(5) If the worker leaves a partner, or partners, and 1 (and only 1) child, the amount of compensation is—

(a) an amount equal to 90% of the prescribed sum payable to the partner or, if more than 1, an amount payable to each partner determined by dividing 90% of the prescribed sum into equal shares; and

(b) an amount equal to 10% of the prescribed sum payable to the child.

(6) If the worker leaves a partner, or partners, and more than 1 and not more than 5 children, the amount of compensation is an amount equal to the prescribed sum payable in the following shares:

(a) an amount equal to 5% of the prescribed sum payable to each child;

(b) the balance to the partner or, if more than 1, an amount payable to each partner determined by dividing the balance into equal shares.

(7) If the worker leaves a partner, or partners, and more than 5 children, the amount of compensation is an amount equal to the prescribed sum payable in the following shares:

(a) an amount equal to 75% of the prescribed sum payable to the partner or, if more than 1, an amount payable to each partner determined by dividing 75% of the prescribed sum into equal shares;

(b) an amount equal to 25% of the prescribed sum payable to the children in equal shares.

(8) If the worker does not leave any partner or child but leaves a person who is to any extent dependent on the worker's earnings, the Corporation may, if it considers that it is justified in the circumstances, pay compensation not exceeding the prescribed sum that the Corporation considers is reasonable and appropriate to the loss to that person (and if the Corporation decides to make a payment of compensation to more than 1 person under this subsection then the sums paid must not in total exceed the prescribed sum).

(9) If the worker, being under the age of 21 years at the time of the work injury, leaves no partner and no child but, immediately before the injury, was contributing to the maintenance of the home of the members of his or her family, the members of his or her family are taken to be dependent on the worker's earnings for the purposes of subsection (8).

(10) If a person who is entitled to a payment under this section is under the age of 18 years, the payment may, if the Corporation so determines, be made wholly or in part to a guardian or trustee for the benefit of that person.

(11) A claimant is entitled to interest at the prescribed rate on an amount of compensation payable under this section in respect of the period beginning on the date the claim for compensation was lodged in accordance with this Act and ending on the date of the payment.

62—Funeral benefits

(1) If a worker dies as a result of a work injury, a funeral benefit is payable equal to—

(a) the actual cost of the worker's funeral; or

(b) the prescribed amount,

whichever is the lesser.

(2) A funeral benefit payable under subsection (1) will be paid—

(a) to the person who conducted the funeral; or

(b) to a person who has paid, or is liable to pay, the funeral expenses of the deceased worker.

(3) An amount prescribed by regulation under subsection (1) may, if the regulations so provide, be indexed so as to provide annual adjustments according to changes in the CPI.

63—Counselling services

(1) If a worker dies as a result of a work injury, a family member is entitled to be compensated for the cost of approved counselling services to assist the family member to deal with issues associated with the death.

(2) Compensation in respect of costs under this section may be paid—

(a) to the family member; or

(b) directly to the person to whom the family member is liable for those costs.

(3) Compensation under this section will be payable in accordance with scales determined or approved by the Minister and published in the Gazette.

(4) A reference in this section to approved counselling services is a reference to counselling services of a kind, or provided by a person, approved by the Corporation for the purposes of this section.

(5) In this section—

family member means a spouse, domestic partner, parent, sibling or child of the worker or of the worker's spouse or domestic partner.

Division 9—Rules as to liability

64—Incidence of liability

(1) Subject to this section, the Corporation is liable for the compensation that is payable under this Part on account of the occurrence of a work injury.

(2) If a work injury arises from employment by a self-insured employer, the self-insured employer is liable to make all payments of compensation to which any person becomes entitled in consequence of the occurrence of that work injury.

(3) A self-insured employer is liable to make all outstanding payments of compensation to which a person is entitled in consequence of the occurrence of a work injury arising from employment by the employer that occurred before the employer became a self-insured employer.

(4) In connection with the assumption of liability by a self-insured employer under subsection (3) to make outstanding payments of compensation, the Corporation must determine, in accordance with the code of conduct for self-insured employers published by the Corporation in the Gazette under Part 9, whether—

(a) the Corporation is required to make a payment to the self-insured employer; or

(b) the self-insured employer is required to make a payment to the Corporation,

and the amount of any such payment.

(5) Subject to this section, if a worker is, as a result of a work injury, totally or partially incapacitated for work and is in employment when the incapacity arises, the worker's employer is liable to pay compensation by way of income maintenance—

(a) if the period of incapacity is no more than the excess liability period—for the whole period of incapacity; or

(b) if the period of incapacity is more than the excess liability period—for the excess liability period.

(6) For the purposes of subsection (5), the excess liability period is the first 2 weeks of the period of incapacity.

(7) If separate periods of incapacity commence during the course of the same calendar year (whether attributable to the same injury or not), an employer is not liable to pay compensation under subsection (5) for those periods of incapacity in excess of an amount equal to twice the worker's average weekly earnings.

(8) If a worker is, at the commencement of a period of incapacity, in the employment of 2 or more employers, they are liable to pay the compensation referred to in subsection (5) in proportions determined by agreement between them or, in default of agreement, by the Corporation.

(9) An employer who is liable to pay compensation to a worker under subsection (5) must make the payment—

(a) if the claim for compensation is not disputed—within 14 days after the date of the claim; or

(b) if the claim for compensation is disputed—forthwith after the dispute is determined.

(10) If an employer (not being a self-insured employer) pays compensation under subsection (5) in respect of an unrepresentative injury, the employer may recover the amount of the payment from the Corporation.

(11) If an employer pays compensation under subsection (5) in respect of an injury that did not arise from employment by that employer, that employer may recover the amount of the payment from the Corporation, and the Corporation may, in turn, recover that amount—

(a) from the employer from whose employment the injury arose; or

(b) if it appears that the worker was not entitled to that compensation—from the worker.

(12) If the Corporation pays compensation by way of income maintenance to a worker who was not in employment when the incapacity for work arose, the Corporation may recover any amount that would, if the worker had been in employment, have been payable under subsection (5) by the employer from whose employment the worker's injury arose.

(13) The regulations may exempt prescribed classes of employers from the operation of subsection (5) (and in that case the Corporation will undertake any liability of those employers that would otherwise have arisen under that subsection).

(14) The Corporation will also undertake any liability of an employer under subsection (5) in respect of a particular injury if the Corporation is satisfied that the employer has complied with the employer's responsibilities under section 30(5) within 5 days after receipt of the relevant claim (and if an employer pays compensation despite the operation of this subsection, the employer may recover the amount of the payment from the Corporation up to the amount of compensation payable to the worker under this Act in respect of the relevant period).

(15) No compensation by way of income maintenance is payable to an injured self-employed worker whose injury arises from self-employment in respect of the first week of incapacity for work.

(16) An employer may pay compensation by way of income maintenance after the period that applies under subsection (5) (being compensation that would otherwise be payable by the Corporation) in accordance with any guidelines published by the Corporation for the purposes of this subsection.

(17) If an employer makes a payment under subsection (16), the employer may recover the amount of the payment from the Corporation if—

(a) the employer applies to the Corporation in the designated manner and form; and

(b) the Corporation receives the application within 3 months from the date of the payment to the worker, or within such longer period (if any) as the Corporation may, in its absolute discretion, allow in the particular case.

(18) If an employer is liable to make weekly payments of compensation, the Corporation may, at the request of the employer, undertake that liability on the employer's behalf in consideration of the payment by the employer to the Corporation of an amount fixed by the Corporation.

(19) If an employer fails to make a payment of compensation that the employer is liable to make under this Act, the Corporation will make that payment on behalf of the employer.

(20) If the Corporation makes a payment of compensation under subsection (19), the Corporation is entitled to recover from the employer as a debt—

(a) the amount of the payment; and

(b) an administration fee fixed in accordance with the regulations,

(and the Corporation will take all reasonable steps to recover that debt).

(21) Nothing in this section requires an employer (not being a self-insured employer) to undertake a liability under section 40.

65—Augmentation of weekly payment in consequence of delay

(1) Subject to subsection (2), if—

(a) a weekly payment, or part of a weekly payment, is not paid as and when required to be paid under this Act; or

(b) the making of a weekly payment is delayed pending resolution of a dispute under this Act,

any amount in arrears will be increased by interest at the prescribed rate.

(2) No interest is payable under this section if the delay is attributable to some fault on the part of the worker.

Division 10—Related matters

66—Rights of action and recovery against third parties

(1) Subject to this section, nothing in this Part affects a liability arising out of the use of a motor vehicle that gives rise to a liability for motor accident damages.

(2) A court before which an action is brought against an employer for loss arising from a work injury (being an injury arising out of the use of a motor vehicle and gives rise to liability of a kind referred to in subsection (1)) must make due allowance for any compensation paid under this Part to the person by or on whose behalf the action is brought.

(3) If—

(a) a worker suffers a work injury (not being an injury that arises out of the use of a motor vehicle and gives rise to a liability of a kind referred to in subsection (1)); and

(b) the injury is attributable to the negligence of another worker—

(i) who was acting in the course of employment with the same employer; and

(ii) whose negligence did not arise from, or in the course of, serious and wilful misconduct,

the worker has no right of action against the other worker.

(4) If—

(a) a worker suffers a work injury (not being an injury that arises out of the use of a motor vehicle and gives rise to a liability of a kind referred to in subsection (1)); and

(b) action is taken against a person other than the employer for damages in respect of the injury,

the other person has no right to recover a contribution from the employer.

(5) If—

(a) compensation is paid or payable under this Act in respect of a work injury;

(b) a right of action exists against a person other than the employer for damages in respect of the injury,

the person by whom the compensation is paid or payable is entitled to recover from that other person the amount of the compensation in accordance with subsection (7).

(6) If—

(a) a work injury arises out of the use of a motor vehicle; and

(b) the employer was or ought to have been insured against liability for the injury under the law of compulsory third-party motor vehicle insurance; and

(c) compensation is paid or payable by the Corporation or a self-insured employer under this Act in respect of the injury,

the Corporation or a self-insured employer (as the case requires) is entitled to recover the amount of the compensation in accordance with subsection (7).

(7) If—

(a) compensation is paid or payable to a person (the ***injured party***) under this Act; and

(b) the injured party has received, or is entitled to, damages from another person (the ***wrongdoer***) pursuant to rights arising from the same trauma as gave rise to the rights to compensation under this Act; and

(c) the person by whom the compensation is paid or payable under this Act (the ***claimant***) is entitled to recover the amount of the compensation by virtue of subsection (5) or (6),

then the following provisions apply:

(d) the claimant is entitled to recover the amount of compensation paid or payable under this Act from the wrongdoer or the injured party but subject to the following qualifications:

(i) no amount may be recovered from the wrongdoer in excess of the wrongdoer's unsatisfied liability to the injured party; and

(ii) the claimant must exhaust its rights against the wrongdoer before recovering against the injured party; and

(iii) no amount may be recovered from the injured party in excess of the amount of the damages received by the injured party;

(e) the claimant must, on giving notice to a wrongdoer of an entitlement to recover compensation under this section, have a first charge, to the extent of the entitlement, on damages payable by the wrongdoer to the injured party;

(f) any amount recovered by the claimant against a wrongdoer under this subsection will be taken to be an amount paid in or towards satisfaction of the wrongdoer's liability to the injured party;

(g) an action for the recovery of compensation under this subsection—

(i) may be heard and determined in proceedings brought in the District Court of South Australia; and

(ii) must be commenced within 3 years after the date of the trauma referred to in paragraph (b);

(h) the injured party and the claimant may enter into an agreement (a ***deed of release***) under which the parties agree that after the claimant has recovered from the injured party or the wrongdoer the full amount of compensation paid by the claimant to the injured party—

(i) the injured party is then entitled to retain the balance of any damages paid or payable to him or her by the wrongdoer; and

(ii) any liability by the claimant to the injured party under this Act in respect of the work injury (including a liability to provide recovery/return to work services or to provide compensation under Division 4) is discharged; and

(iii) the employer from whose employment the injury arose has no further obligation under this Act to provide suitable employment to the injured party;

(i) a deed of release cannot be entered into unless the injured party has received—

(i) competent professional advice; and

(ii) competent financial advice,

about the consequences of entering into the deed of release;

(j) if the claimant notifies the injured party that it is willing to enter into a deed of release, the claimant is liable to indemnify the injured party for reasonable costs of obtaining the advice required under paragraph (i) up to a limit prescribed by regulation.

(8) This section is intended to apply in relation to any action that arises out of the occurrence of a work injury—

(a) irrespective of where the injury occurred; and

(b) —

(i) irrespective of whether the action is brought before a court of this State or before a court of some other state, territory or country; and

(ii) notwithstanding that the court before which the action is brought would not (but for this subsection) apply, or take into account, South Australian law.

(9) If—

(a) an action is brought in respect of a work injury in a court that is not a court of the State; and

(b) despite subsection (8), the court awards an amount against an employer that is in excess of the amount (if any) that would have been awarded in a similar action before a court of the State; and

(c) the Corporation is liable to pay the amount awarded by virtue of insurance provided under this Act,

the Corporation is entitled to recover the excess from the person to whom the amount is awarded.

(10) In the course of proceedings under subsection (9), a court may—

(a) receive in evidence any transcript of evidence in proceedings before the court by which the amount was awarded and draw any conclusions of fact from the evidence that it considers proper; or

(b) adopt any of the court's findings of fact.

(11) In this section—

damages includes any form of compensation payable apart from this Act in respect of a work injury;

employer includes—

(a) any person who is vicariously liable for the acts of an employer;

(b) any person for whose acts an employer is vicariously liable;

the law of compulsory third-party motor vehicle insurance means—

(a) Part 4 of the *Motor Vehicles Act 1959* (including a policy of insurance under that Part); or

(b) the law of another State or a Territory of the Commonwealth that corresponds to Part 4 of the *Motor Vehicles Act 1959* (including a policy of insurance under such a law).

67—Prohibition of double recovery

(1) Compensation under this Act is not payable in respect of an injury to the extent that compensation has been received in respect of the same injury under the laws of a place other than this State (whether within or outside Australia).

(2) If a person receives compensation under this Act in respect of an injury and, in respect of the same injury, subsequently receives compensation under the laws of a place other than this State (whether within or outside Australia), the person from whom compensation under this Act is received may, in a court of competent jurisdiction, sue and recover (as a debt) from the person the amount described in subsection (3).

(3) The amount that is recoverable under subsection (2) is—

(a) the amount of compensation paid under this Act; or

(b) the amount of compensation received under the laws of the place other than this State,

whichever is the lesser.

(4) The fact that compensation or damages in respect of an injury have been recovered under a foreign law is a bar to the recovery of compensation in respect of the same injury under this Act.

68—Injuries arising from employment on ships

If a work injury arises from employment on a ship the amount of the compensation is not subject to any limitation imposed by the *Merchant Shipping Act 1894* of the United Kingdom.

69—Sporting injuries

(1) Despite any other provision of this Act, but subject to subsection (2), if—

(a) a worker is employed by an employer solely—

(i) to participate as a contestant in a sporting or athletic activity (and to engage in training or preparation with a view to such participation); or

(ii) to act as a referee or umpire in relation to a sporting or athletic contest (and to engage in training or preparation with a view to so acting); and

(b) remuneration is not payable under the contract of employment except in respect of such employment,

an injury arising out of or in the course of that employment is not compensable under this Act.

(2) This section does not apply to—

(a) a person authorised or permitted by a racing controlling authority within the meaning of the *Authorised Betting Operations Act 2000* to ride or drive in a race within the meaning of that Act; or

(b) a boxer, wrestler or referee employed or engaged for a fee to take part in a boxing or wrestling match; or

(c) a person who derives an entire livelihood, or an annual income in excess of the prescribed amount, from employment of a kind referred to in subsection (1)(a).

(3) In this section—

prescribed amount means $65 600 (indexed).

Part 5—Common law

Division 1—Preliminary

70—Preliminary

(1) A reference in this Part to a worker's employer includes a reference to—

(a) a person who is vicariously liable for the acts of the employer; and

(b) a person for whose acts the employer is vicariously liable.

(2) A reference in this Part to a percentage (or degree) of permanent impairment is a reference to a percentage (or degree) of whole person impairment.

(3) A reference in this Part to compensation payable under this Act includes a reference to compensation that would be payable under this Act if a claim for that compensation were duly made.

71—Application of Part in relation to damages and scope and limitation of liability

(1) This Part applies to an award of damages in respect of—

(a) a work injury to a worker; or

(b) the death of a worker resulting from a work injury,

being an injury caused by the negligence or other tort (including breach of statutory duty) of the worker's employer and arising from employment (and a reference to damages in this Part must be construed accordingly).

(2) An employer is not liable to an award of damages in respect of a psychiatric injury under subsection (1) unless the psychiatric injury is primarily caused by the negligence or other tort (including breach of statutory duty) of the worker's employer referred to in that subsection and an employer is not liable to an award of damages in respect of consequential mental harm (and subsection (1) operates subject to this subsection).

(3) A worker cannot commence proceedings in a court for damages within the scope of subsection (1) unless or until an assessment of the degree of permanent impairment of the worker has been undertaken under Part 2 Division 5.

(4) This Part does not apply to an award of motor accident damages (subject to any express provision about motor accident damages).

(5) This Part applies to an award of damages in respect of an injury caused by the negligence or other tort of the worker's employer even though the damages are recovered in an action for breach of contract or in any other action based on the same act or omission of the employer that would have founded an action for negligence or on account of another tort.

(6) Subsection (5) is enacted for the avoidance of doubt.

(7) An employer is not liable to an award of damages in respect of—

(a) a work injury to a worker; or

(b) the death of a worker resulting from a work injury,

unless—

(c) the damages fall within the scope of subsection (1), (2) or (5); or

(d) the damages constitute motor vehicle damages.

(8) A liability for damages referred to in subsection (1), (2) or (5) does not arise unless a successful claim for compensation in respect of the work injury has been made under Part 4.

(9) An employer is not liable to an award of damages in respect of—

(a) a work injury to a worker; or

(b) the death of a worker resulting from a work injury,

if—

(c) the employer is a body corporate; and

(d) the worker is a director as well as an employee of the employer.

(10) Subsections (7), (8) and (9) do not derogate from any other provision of this Act which restricts or rules out an award of damages.

(11) In subsection (9)—

director, in relation to an employer that is a body corporate, means a person who—

(a) has a substantial interest in the body corporate; or

(b) has a proprietary interest in any business or undertaking being carried on by the body corporate.

(12) For the purposes of subsection (11), a person has a substantial interest in a body corporate if—

(a) the person is a member of the governing body of the body corporate and is entitled to exercise 20% or more of the voting power at meetings of the governing body; or

(b) a member of the governing body of the body corporate who is entitled to exercise 20% or more of the voting power at meetings of the governing body is under an obligation, whether formal or informal, to act in accordance with the direction, instructions or wishes of the person; or

(c) in the case of a body corporate that has a share capital—the person can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, 20% or more of the voting power attached to voting shares, or any class of voting shares, issued by the body corporate; or

(d) the person satisfies any other criteria prescribed by the regulations for the purposes of this subsection.

72—No damages unless whole person impairment of at least 30%

(1) No damages may be awarded against an employer except in circumstances that are consistent with the operation of this Part and unless the injury results in—

(a) a degree of permanent impairment of the worker that is at least 30%; or

(b) the death of the worker.

(2) The degree of permanent impairment resulting from an injury is to be assessed—

(a) under Part 2 Division 5; or

(b) if relevant, under Part 8,

and if there is a difference between an assessment under paragraph (a) and an assessment under paragraph (b), the assessment under paragraph (b) applies and if there is a difference between an earlier decision of the Tribunal under Part 8 and a later decision of a court under the same Part, the decision of the court prevails.

(3) In assessing whether the 30% threshold referred to in subsection (1) has been met (that is, whether the degree of permanent impairment resulting from an injury is at least 30%)—

(a) impairment resulting from physical injury is to be assessed separately from impairment resulting from psychiatric injury; and

(b) in assessing impairment resulting from physical injury or psychiatric injury, no regard is to be had to impairment that results from consequential mental harm; and

(c) in assessing the degree of permanent impairment resulting from physical injury, no regard is to be had to impairment that results from a psychiatric injury or consequential mental harm; and

(d) the 30% threshold is not met unless the degree of permanent impairment resulting from physical injury is at least 30% or the degree of permanent impairment resulting from psychiatric injury is at least 30%.

73—Seriously injured workers—special provisions

(1) This section applies in relation to a seriously injured worker if the seriously injured worker has a right of action against an employer in the circumstances to which this Part applies.

(2) A worker to whom this section applies—

(a) is not entitled in an action against an employer to damages in respect of any treatment, care or support services; and

(b) is not entitled to both—

(i) a redemption of a liability to make weekly payments under Part 4 Division 5; and

(ii) damages for future economic loss due to the deprivation or impairment of earning capacity in an action against an employer; and

(c) in any event, is not entitled in an action against an employer to any damages other than damages that are for economic loss.

(3) For the purposes of subsection (2)(a), treatment, care or support services are—

(a) recovery/return to work services provided under Part 3; and

(b) services for which compensation is payable under Part 4 Division 2.

(4) For the purposes of subsection (2)(b), a worker to whom this section applies must, in accordance with the regulations, elect to claim damages of the kind referred to in subsection (2)(b)(ii) or to enter into an agreement under Part 4 Division 5.

(5) A worker to whom this section applies cannot commence an action for damages referred to in subsection (2)(b) or enter into an agreement under Part 4 Division 5 unless or until an election has been made under subsection (4).

(6) In addition to any requirement prescribed by the regulations, a worker cannot make an election under subsection (4) unless the worker has received advice about the consequences of the election from a legal practitioner who holds a current practising certificate.

(7) A worker is entitled to an amount, prescribed by or under the regulations, to compensate a worker for the cost of obtaining advice for the purposes of subsection (6).

74—General regulation of court awards

A court may not award damages to a person contrary to this Part or in a manner or to an extent that is inconsistent with this Part.

Division 2—General principles

75—Effect of recovery of damages on compensation

(1) If a person (being a worker or other person) recovers damages in respect of an injury from the employer and the relevant compensating authority is liable to pay compensation under this Act in respect of the same injury then (except to the extent that subsection (3) or (5) covers the case)—

(a) the person ceases to be entitled to any further compensation under this Act in respect of the injury concerned (including compensation claimed but not yet paid); and

(b) the amount of any compensation already paid in respect of the injury concerned is to be deducted from the damages; and

(c) the person ceases to be entitled to receive recovery/return to work services under this Act.

(2) Subsection (1)—

(a) does not extend to an entitlement of a seriously injured worker—

(i) to receive any services under Part 3; or

(ii) to receive compensation (or any provision of services) under Part 4 Division 2; and

(b) does not operate so as to require a deduction under subsection (1)(b) with respect to compensation already paid to a seriously injured worker for any services under Part 4 Division 2; and

(c) does not operate with respect to compensation under Part 4 Division 7.

(3) If damages in respect of an injury are recovered pursuant to a cause of action that survives for the benefit of the estate of a deceased worker under the *Survival of Causes of Action Act 1940*, the amount of any weekly payments of compensation already paid in respect of the injury concerned are to be repaid out of the estate of the deceased worker to the relevant compensating authority.

(4) If a person recovers damages as a dependant of a worker in respect of proceedings in respect of the death of the worker—

(a) the relevant compensating authority is not liable to pay compensation, or further compensation, in respect of the death; and

(b) the amount of any compensation already paid to the dependant under Part 4 Division 8 in respect of the death of the worker is to be deducted from the damages.

(5) If a person (being a worker or other person) recovers motor accident damages in respect of an injury under this Act (whether from the employer or another party)—

(a) the person ceases to be entitled to any further compensation under this Act in respect of the injury concerned (including compensation claimed but not yet paid); and

(b) the amount of any compensation already paid in respect of the injury concerned is to be deducted from the damages (awarded or otherwise paid as a lump sum) and is to be paid to the relevant compensating authority.

(6) If a person (being a worker or other person) recovers any other damages in respect of an injury under this Act from a person other than the employer—

(a) the person ceases to be entitled to any further compensation under this Act in respect of the injury concerned (including compensation claimed but not yet paid); and

(b) the amount of any compensation already paid in respect of the injury concerned is to be deducted from the damages (awarded or otherwise paid as a lump sum) and is to be paid to the relevant compensating authority.

(7) Subsection (6)(a) does not extend to an entitlement of a seriously injured worker—

(a) to receive any services under Part 3; or

(b) to receive compensation (or any provision of services) under Part 4 Division 2.

(8) Nothing in this section limits or restricts a right of recovery under section 66.

(9) In this section—

relevant compensating authority means the Corporation or a self-insured employer, depending on which entity has paid compensation under this Act, or is liable to pay compensation under this Act, in the particular case.

76—Retirement age

In awarding damages for future economic loss due to deprivation or impairment of earning capacity or loss of expectation of financial support in a case where this Part applies, the court is to disregard any earning capacity of the worker after pension age (as defined in the *Social Security Act 1991* of the Commonwealth for persons other than veterans).

77—Mitigation of damages

(1) In assessing damages in a case where this Part applies, the court must consider the steps that have been taken, and that could reasonably have been or be taken by the injured worker, to mitigate those damages.

(2) In particular, the court must consider the following matters:

(a) whether the injured worker has undergone appropriate medical treatment;

(b) whether the injured worker has duly complied with any other relevant obligation under Part 3 or Part 4.

(3) In any proceedings for damages, the person claiming damages has the onus of proving that all reasonable steps to mitigate damages have been taken by the injured worker.

(4) However, the person claiming damages does not have the onus of establishing that the steps referred to in paragraph (b) of subsection (2) have been taken, and the court assessing damages does not have to take the matters referred to in that paragraph into account, unless it is established that before those steps could reasonably be expected to have been taken the worker was made aware by the employer or the Corporation that the worker was required to take those steps.

(5) In any proceedings for damages, a written report by a person who provided medical or recovery/return to work services to the injured worker is admissible as evidence of any such steps taken by that worker.

78—Payment of interest—limited statutory entitlement

(1) A plaintiff has only such right to interest on damages in a case where this Part applies as is conferred by this section.

(2) Interest is not payable (and a court cannot order the payment of interest) on damages unless—

(a) information that would enable a proper assessment of the plaintiff's claim has been given to the defendant and the defendant has had a reasonable opportunity to make an offer of settlement (where it would be appropriate to do so) in respect of the plaintiff's full entitlement to all damages of any kind relevant to the operation of this Part but has not made such an offer; or

(b) the defendant has had a reasonable opportunity to make a revised offer of settlement (where it would be appropriate to do so) in the light of further information given by the plaintiff that would enable a proper assessment of the plaintiff's full entitlement to all damages of any kind relevant to the operation of this Part but has not made such an offer; or

(c) the defendant has made an offer of settlement, the amount of all damages of any kind awarded by the court (without the addition of any interest) is more than 20% higher than the highest amount offered by the defendant and the highest amount is unreasonable having regard to the information available to the defendant when the offer was made.

(3) The highest amount offered by the defendant is not unreasonable if, when the offer was made, the defendant was not able to make a reasonable assessment of the plaintiff's full entitlement to all damages of any kind relevant to the operation of this Part.

(4) For the purposes of subsection (2), an offer of settlement must be in writing.

(5) If a court is satisfied that interest is payable under subsection (2) on damages—

(a) the amount of interest is to be calculated for the period from the date of the injury to or death of the worker until the date on which the court determines the damages; and

(b) the amount of interest is to be calculated in accordance with the principles ordinarily applied by the court for that purpose, subject to this section.

(6) Nothing in this section affects the payment of interest on a debt under a judgment or order of a court.

79—Contributory negligence

The common law and enacted law as to contributory negligence apply in relation to awards of damages under this Part.

80—Defence of voluntary assumption of risk

The defence of voluntary assumption of risk (*volenti non fit injuria*) is not available in an action for the award of damages in a case where this Part applies but, where that defence would otherwise have been available, the amount of any damages is to be reduced to such extent as is just and equitable on the presumption that the injured or deceased person was negligent in failing to take sufficient care for his or her own safety.

81—Exemplary or punitive damages

A court may not award exemplary or punitive damages to a person in an award of damages to which this Part applies.

82—Court to apportion damages etc

(1) If a judgment is obtained for payment of damages to which this Part applies as well as for other damages, the court is required, as part of the judgment, to declare what portion of the sum awarded by the judgment is damages to which this Part applies.

(2) In any such case the court is required to apportion any costs awarded.

83—Abolition of doctrine of common employment

(1) It is not a defence to an employer who is sued in respect of any personal injury caused by the negligence of a person employed by the employer that the person so employed was, at the time the personal injury was caused, in common employment with the person injured.

(2) This section applies to every case in which the relationship of employer and employee exists, whether the contract of employment is made before or after the commencement of this section.

(3) In this section—

employer includes the Crown but does not include any person who, by any provision of this Act, is deemed to be an employer;

personal injury includes—

(a) death; and

(b) any disease; and

(c) any impairment of the physical or mental condition of a person.

84—No damages for nervous shock injury to non-workers

No damages for pure mental harm may be awarded against an employer in respect of the death of or injury to a worker in a case where this Part applies if the pure mental harm arises wholly or partly from mental or nervous shock in connection with that death or injury unless the pure mental harm is in itself a work injury under this Act.

Division 3—Procedural matters and costs

85—Compulsory mediation

(1) Subject to this section, a court before which an action for damages to which this Part applies is brought must not proceed to a trial in the matter unless or until a pre-trial mediation has been conducted under this section.

(2) The court is to appoint the person who will conduct the mediation (who may, but need not be, a member of the court).

(3) Each party to the proceedings is to attend the mediation unless excused from attendance by the mediator.

(4) The mediator is to use his or her best endeavours to bring the parties to agreement on the relevant claim.

(5) Failing agreement, the mediator may issue a certificate certifying any final offers of settlement made by the parties in the mediation.

(6) The amount of any offer of settlement made by a party in the course of mediation of a claim is not to be specified in any pleading, affidavit or other document filed in or in connection with court proceedings on the claim, and is not to be disclosed to or taken into account by the court, before the court's determination of the amount of damages in the proceedings.

(7) However, an offer of settlement will be relevant to the question of costs in any proceedings that do not settle before judgment.

(8) In addition to subsection (6), evidence of anything said or done in the course of mediation is inadmissible in proceedings before the court except by consent of all parties to the proceedings.

(9) A matter or thing done or omitted to be done by a mediator in the exercise of the mediator's functions does not, if the matter or thing was done or omitted in good faith, subject the mediator personally to any action, liability, claim or demand.

(10) The regulations may make provision for or with respect to the fees to be paid in connection with mediation under this section.

(11) In particular, the regulations may specify any such fee or the method by which the fee is to be calculated, and may specify by whom and in what circumstances the fee is payable.

(12) The rules of the court before which the relevant proceedings have been brought may make other provision in relation to mediations under this section.

86—Costs

(1) When, in relation to an action for damages brought under this Part—

(a) the proceedings are settled; or

(b) a judgment is given; or

(c) the proceedings are otherwise brought to an end,

a legal practitioner acting on behalf of any party must, in accordance with the regulations, declare the legal costs that the legal practitioner has charged, or intends to charge, the party.

(2) The regulations under subsection (1) may include a requirement that the declaration be furnished to any person specified by the regulations.

(3) This section does not extend to proceedings before the Supreme Court on an appeal.

(4) In this section—

legal costs includes disbursements.

Division 4—Choice of law

87—The applicable substantive law for work injury claims

(1) If there is an entitlement to compensation under the statutory workers compensation scheme of a State in respect of an injury to a worker (whether or not compensation has been paid), the substantive law of that State is the substantive law that governs—

(a) whether or not a claim for damages in respect of the injury can be made; and

(b) if it can be made, the determination of the claim.

(2) This Division does not apply if compensation is payable in respect of the injury under the statutory workers compensation scheme of more than 1 State.

(3) For the purposes of this section, compensation is considered to be payable under a statutory workers compensation scheme of a State in respect of an injury if compensation in respect of it—

(a) would have been payable but for a provision of the scheme that excludes the worker's right to compensation because the injury is attributable to any conduct or failure of the worker that is specified in that provision; or

(b) would have been payable if a claim for that compensation had been duly made, and (where applicable) an election to claim that compensation (instead of damages) had been duly made.

(4) A reference in this section to compensation payable in respect of an injury does not include a reference to compensation payable on the basis of the provisional acceptance of liability.

(5) In this Division—

State includes a Territory.

88—Claims to which Division applies

(1) This Division applies to a claim for damages or recovery of contribution brought against a worker's employer in respect of an injury that was caused by—

(a) the negligence or other tort (including breach of statutory duty) of the worker's employer; or

(b) a breach of contract by the worker's employer.

(2) This Division also applies to a claim for damages or recovery of contribution brought against a person other than a worker's employer in respect of an injury if—

(a) the worker's employment is connected with this State; and

(b) the negligence or other tort or the breach of contract on which the claim is founded occurred in this State.

(3) Subsections (1)(a) and (2) apply even if damages resulting from the negligence or other tort are claimed in an action for breach of contract or other action.

(4) A reference in this Division to a worker's employer includes a reference to—

(a) a person who is vicariously liable for the acts of the employer; and

(b) a person for whose acts the employer is vicariously liable.

89—What constitutes injury and employment

For the purposes of this Division—

(a) ***injury***, ***employer*** and ***worker*** include anything that is within the scope of a corresponding term in the statutory workers compensation scheme of another State; and

(b) the determination of what constitutes employment or whether or not a person is a worker or a worker's employer is to be made on the basis that those concepts include anything that is within the scope of a corresponding concept in the statutory workers compensation scheme of another State.

90—Claim in respect of death included

For the purposes of this Division, a claim for damages in respect of death resulting from an injury is to be considered as a claim for damages in respect of the injury.

91—Meaning of substantive law

In this Division—

a State's legislation about damages for a work related injury means—

(a) for this State—this Part and any other provision of this Act providing for the interpretation of anything in this Part; and

(b) for another State—any provisions of a law of that State that is declared by the regulations to be the State's legislation about damages for a work related injury;

substantive law includes—

(a) a law that establishes, modifies, or extinguishes a cause of action or a defence to a cause of action;

(b) a law prescribing the time within which an action must be brought (including a law providing for the extension or abridgment of that time);

(c) a law that provides for the limitation or exclusion of liability or the barring of a right of action if a proceeding on, or arbitration of, a claim is not commenced within a particular time limit;

(d) a law that limits the kinds of injury, loss or damage for which damages or compensation may be recovered;

(e) a law that precludes the recovery of damages or compensation or limits the amount of damages or compensation that can be recovered;

(f) a law expressed as a presumption, or rule of evidence, that affects substantive rights;

(g) a provision of a State's legislation about damages for a work related injury, whether or not it would be otherwise regarded as procedural in nature,

but does not include a law prescribing rules for choice of law.

92—Availability of action in another State not relevant

(1) It makes no difference for the purposes of this Division that, under the substantive law of another State—

(a) the nature of the circumstances is such that they would not have given rise to a cause of action had they occurred in that State; or

(b) the circumstances on which the claim is based do not give rise to a cause of action.

(2) In subsection (1)—

another State means a State other than the State with which the worker's employment is connected.

Division 5—Related matters

93—Ability of Corporation to conduct and settle proceedings

(1) If a proceeding is brought for damages in a case where this Part applies, the proceeding must be against the employer and not against the Corporation.

(2) However, other than in the case of a self-insured employer, the Corporation is entitled—

(a) to conduct for the employer all proceedings to which the employer is a party (and to take any action in connection with the proceedings as if the Corporation were a party to the proceedings); and

(b) to settle any matter that is the subject of proceedings under this Part (including by making offers and counter-offers of settlement on behalf of the employer).

(3) In connection with subsections (1) and (2) (other than in the case of a self-insured employer)—

(a) a copy of any statement of claim and other documentation lodged with a court for the purposes of bringing an action for damages under this Part must be served on the Corporation as well as the employer; and

(b) the employer against whom proceedings are brought under this Part must cooperate fully with the Corporation and give the Corporation all information and access to documents in relation to such proceedings or the relevant cause of action that the Corporation reasonably requires; and

(c) the employer immediately on being required to do so by the Corporation must execute all documents and do everything that the Corporation considers reasonably necessary to allow any proceedings to be conducted by the Corporation; and

(d) the Corporation will be subrogated to the rights of the employer to such extent as the Corporation may determine.

(4) If an employer, other than a self-insured employer—

(a) is absent from the State or, after reasonable inquiry, cannot be found; or

(b) refuses, fails or is unable to execute any documents required for the purposes of subsection (2) or mentioned under subsection (3),

the Corporation may execute any document that the Corporation requires in connection with the operation of this section.

(5) The Corporation may recover from an employer as a debt any additional costs reasonably incurred by the Corporation in connection with any proceedings under this Part as a direct result of the employer's non-compliance with this section.

94—Interaction with *Civil Liability Act 1936*

In the event of an inconsistency between this Act and the *Civil Liability Act 1936*, this Act will prevail to the extent of the inconsistency (but this Act will not otherwise limit the operation of any provision of that Act in respect of a cause of action for damages under this Part (as compared to workers compensation under the other parts of this Act)).

Part 6—Dispute resolution

Division 1—Preliminary

95—Specific object

The vesting of jurisdiction in the Tribunal under this Part is intended to achieve an outcome in any proceedings that is based on quick and efficient decision-making that resolves disputes expeditiously and fairly.

96—Interpretation

In this Part—

applicant means the person who makes an application to the Tribunal under this Part;

party to proceedings means—

(a) the applicant; and

(b) the relevant compensating authority; and

(c) if the matter is about a work injury and the worker who suffered or is alleged to have suffered the work injury is not the applicant—the worker; and

(d) if the matter is about a work injury and the employer from whose employment the injury arose or is alleged to have arisen is not the applicant—the employer; and

(e) a person who has a direct interest in the matter and has notified the Registrar of the interest;

relevant compensating authority in relation to a particular decision means—

(a) if the decision was made by the Corporation or a body corporate exercising powers delegated by the Corporation—the Corporation or the relevant delegate; or

(b) if the decision was made by a self-insured employer—the self-insured employer;

rules means the rules of the Tribunal.

97—Reviewable decisions

The following decisions are reviewable:

(a) a decision made as a result of an application under section 21(3);

(b) a decision about the nature or scope of recovery/return to work services provided, or to be provided, for a worker;

(c) without limiting paragraph (b)—a decision relating to a recovery/return to work plan, or a provision of a recovery/return to work plan (including on a review of a recovery/return to work plan), on the ground that the decision or the provision is unreasonable;

(d) a decision as to a permanent impairment matter under Part 2 Division 5;

(e) a decision on a claim under section 31 (and, if a claim is accepted, will include the calculation of average weekly earnings under section 5 and the amount of any payment under Part 4);

(f) a decision to redetermine a claim under section 31;

(g) without limiting a preceding paragraph—a decision on a claim for compensation for costs under section 33(2);

(h) a decision not to approve the provision of services or the incurring of costs on an application under section 33(17);

(i) a decision not to approve surgery under section 33(21)(b)(ii) or the provision of services under section 33(21)(b)(iii);

(j) a decision to review, vary, discontinue or suspend weekly payments under Part 4 Division 4 Subdivision 2, Subdivision 3 or Subdivision 4;

(k) a decision to suspend weekly payments under section 51(4);

(l) without limiting a preceding paragraph, a decision as to the amount payable under Part 4 Division 6 or Division 7 or any decision under Part 4 Division 8 (including on a review under section 60);

(m) a decision on a claim made by the Tribunal made in the exercise of its jurisdiction under Part 7;

(n) a decision declared to be reviewable by regulations made for the purposes of this section.

Division 2—Conferral of jurisdiction

98—Conferral of jurisdiction

(1) The Tribunal has jurisdiction to deal with a reviewable decision.

(2) Despite section 27 of the *South Australian Employment Tribunal Act 2014*, the Tribunal will conduct a review of a reviewable decision as a hearing *de novo*.

Division 3—Institution of proceedings

99—Application to Tribunal

(1) A person with a direct interest in a reviewable decision may commence proceedings for a review of the reviewable decision by the Tribunal.

(2) A person has a direct interest in a reviewable decision if the person—

(a) is directly affected by the decision; or

(b) is the employer from whose employment the work injury arose or is alleged to have arisen.

100—Time for making application

(1) An application may be made to the Tribunal within 1 month after the applicant receives notice of the reviewable decision unless the Tribunal allows an extension of time.

(2) The Tribunal must only allow an extension of time under subsection (1) if satisfied—

(a) that good reason exists; and

(b) that another party will not be unreasonably disadvantaged because of the delay in commencing the proceedings.

101—Notice to be given by Registrar

(1) On receiving an application under this Part, the Registrar must immediately send copies of the application to the other parties to the proceedings.

(2) The copy of the application sent to the relevant compensating authority must be accompanied by copies of any documentary materials lodged with the application.

Division 4—Initial reconsideration

102—Initial reconsideration

(1) The relevant compensating authority must, on receiving a copy of an application under this Part—

(a) assign a suitable person to reconsider the decision to which the application relates; and

(b) have the decision reconsidered in the light of the matters set out in the application.

(2) A person assigned to reconsider the decision—

(a) may be (but need not be) an officer of the relevant compensating authority but must not be the person who made the decision; and

(b) must be a person who has been nominated to the Registrar in accordance with the regulations as a person who may be assigned to reconsider decisions under this Division.

(3) On completion of the reconsideration, the relevant compensating authority must confirm or vary the decision to conform with the result of the reconsideration and give the Registrar a written notice stating—

(a) the result of the reconsideration; and

(b) whether the compensating authority has confirmed or varied the decision as a result of the reconsideration and, if the decision has been varied, how the decision has been varied.

(4) If the disputed decision is varied, the written notice must also be given to the other parties to the proceedings.

(5) The relevant compensating authority must complete the reconsideration and give the notice or notices stating the result of the reconsideration as soon as is reasonably practicable but in any event within 10 business days after receiving the copy of the application or a longer time allowed by the Registrar on the authority's application.

Maximum penalty: $5 000.

(6) The variation of a decision under this section is not to be regarded as a redetermination of a claim under the other provisions of this Act.

(7) A decision on a claim by the Tribunal itself, made in the exercise of the Tribunal's special jurisdiction to expedite decisions on claims, is not liable to reconsideration under this section and if such a decision is the subject of an application under this Part, the matter will immediately proceed to be reviewed under Part 3 of the *South Australian Employment Tribunal Act 2014*.

103—Proceedings on application

(1) If in a case where section 102 applies—

(a) the relevant compensating authority, on reconsideration of a decision under this Division, confirms the decision; or

(b) the relevant compensating authority, on reconsideration of a decision under this Division, varies the decision and a party to the dispute expresses dissatisfaction with the result of the reconsideration in accordance with the rules,

the matter will be dealt with under Part 3 of the *South Australian Employment Tribunal Act 2014*.

(2) The reconsideration of a matter under this Division should not unduly delay proceedings before the Tribunal and the Tribunal must, so far as is reasonably practicable, undertake its processes pending the outcome of the reconsideration (including by listing the matter, setting up or conducting any conference, or taking other such steps).

Division 5—Related matters—Tribunal proceedings

104—Conciliation conference

(1) Before the Tribunal proceeds with the hearing of a matter under this Part, a compulsory conciliation conference between the parties must be held in accordance with section 43 of the *South Australian Employment Tribunal Act 2014*.

(2) In connection with the operation of subsection (1), the Tribunal must not dispense with a conference under section 43(3) of the *South Australian Employment Tribunal Act 2014* but the member of the Tribunal presiding at the conference may close the conference at any time if it appears to him or her that the matter should immediately be referred to the Tribunal for hearing and determination.

(3) When a matter is referred to a conference under section 43 of the *South Australian Employment Tribunal Act 2014*, each party must, in accordance with the rules of the Tribunal—

(a) disclose to the member of the Tribunal presiding over the conference the existence and nature of all evidentiary material in the party's possession relevant to the matter; and

(b) at the request of another party to the proceedings, give the party access to the relevant evidentiary material.

(4) However, if the member of the Tribunal presiding over the conference agrees, a party need not give another party access to evidentiary material if—

(a) the material is a paper, videotape, compact disc or other electronic recording of photographic material, or a report of surveillance; or

(b) the disclosure of the material could prejudice the investigation of a suspected offence.

(5) Despite section 43(14) of the *South Australian Employment Tribunal Act 2014*—

(a) evidence of a settlement reached at a conference under that section is admissible (without the consent of all parties) in subsequent proceedings; and

(b) evidence of the offers made in the course of a conference under that section is admissible (without consent of all parties) in subsequent proceedings for the purpose of applying provisions for deciding questions about costs.

105—Representation

(1) In addition to section 51(1)(a) and (b) of the *South Australian Employment Tribunal Act 2014*, a party to proceedings before the Tribunal under this Act is entitled, without leave, to be represented by an officer or employee of an industrial association acting in the course of employment with that industrial association.

(2) Section 51(1)(c) of the *South Australian Employment Tribunal Act 2014* does not apply with respect to proceedings under this Act.

106—Costs

(1) A party (other than the relevant compensating authority) is entitled, subject to this Part and to limits prescribed by regulation, to an award against the relevant compensating authority for the party's reasonable costs of—

(a) any initial reconsideration of a decision under Division 4; and

(b) any subsequent proceedings for resolution of the matter before the Tribunal.

(2) Costs may only be awarded to cover—

(a) the cost of representation by a legal practitioner or an officer or employee of an industrial association; and

(b) costs of a kind authorised by the regulations that were reasonably incurred.

(3) If the Tribunal is of the opinion that a party—

(a) has acted unreasonably—

(i) in bringing proceedings before the Tribunal; or

(ii) in view of an assessment or recommendation of a member of the Tribunal under section 43(13) of the *South Australian Employment Tribunal Act 2014*; or

(iii) without limiting subparagraph (ii)—in failing to discontinue or settle any proceedings before the conclusion of the hearing of a matter; or

(iv) in relation to any other aspect of the conduct of proceedings before the Tribunal; or

(b) has acted frivolously or vexatiously in bringing or in relation to the conduct of proceedings before the Tribunal,

the Tribunal may—

(c) decline to make an award of costs in favour of the party and may further (if it thinks fit) make an award of costs against the party; or

(d) reduce the amount of the award of costs to which the party would otherwise have been entitled.

(4) Subject to subsection (5), an award of costs to cover professional advice or assistance may, if the Tribunal considers appropriate, be made in favour of the person who provided the professional advice or assistance.

(5) An award of costs to cover the cost of representation by an officer or employee of an industrial association are payable to the industrial association.

(6) An award of legal costs cannot exceed 85% of the amount that would be allowable under the relevant Supreme Court scale if the proceedings were in the Supreme Court.

(7) If the amount of permanent impairment compensation is disputed by a worker and the amount the Tribunal awards is less than, or the same as, or less than 10% above, an amount offered by the relevant compensating authority to settle the matter before the matter proceeds to a hearing before the Tribunal, the worker is not entitled to costs under this section (and evidence of an offer made in the course of a compulsory conference or mediation is admissible (without the consent of all parties) in subsequent proceedings for the purpose of applying this provision).

(8) Section 57 of the *South Australian Employment Tribunal Act 2014* does not apply to proceedings before the Tribunal under this Act.

107—Costs liability of representatives

(1) In this section—

professional representative means a legal practitioner or other person who has been engaged or appointed to represent a party to proceedings before the Tribunal (whether personally or through an employee or agent).

(2) If a professional representative acting for a party to proceedings before the Tribunal under this Part (whether personally or through an employee or agent) has caused costs—

(a) to be incurred improperly or without reasonable cause; or

(b) to be wasted by undue delay or negligence or by any other misconduct or default,

the Tribunal may make an order as specified in subsection (3).

(3) The Tribunal may order—

(a) that all or any of the costs between the professional representative and his or her client be disallowed or that the professional representative repay to his or her client the whole or part of any money paid on account of costs;

(b) that the professional representative pay to his or her client all or any of the costs which his or her client has been ordered to pay to any party;

(c) that the professional representative pay all or any of the costs of any party other than his or her client.

(4) Without limiting subsection (2), a professional representative is in default for the purposes of that subsection if any proceedings cannot conveniently be heard or proceed, or fail or are adjourned without any useful progress being made, because the professional representative failed to—

(a) attend in person or by a proper representative; or

(b) file any document which ought to have been filed; or

(c) lodge or deliver any document for the use of the Tribunal which ought to have been lodged or delivered; or

(d) be prepared with any proper evidence or account; or

(e) otherwise proceed.

(5) The Tribunal may not make an order against a professional representative under subsection (3) unless the Tribunal has informed the professional representative of the nature of the order proposed and allowed the professional representative a reasonable opportunity to make representations, and call evidence, in relation to the matter.

(6) The Tribunal may order that notice of any proceedings or order against a professional representative under this section be given to the client in such manner as the Tribunal directs.

(7) The Tribunal's power to make an order under subsection (3) is exercisable by—

(a) a presidential member of the Tribunal; or

(b) another member of the Tribunal who is authorised by a presidential member of the Tribunal to make the particular order.

108—Recovery of costs of representation

(1) A representative of a party to proceedings before the Tribunal under this Act must not charge nor seek to recover for work involved in, or associated with, that representation an amount exceeding the amount allowable under a scale fixed by regulation.

Maximum penalty: $2 000.

(2) Before proposing a regulation under this section to the Executive Council, the Minister must consult with the Crown Solicitor.

109—Ministerial intervention

The Minister may, if satisfied that intervention is justified in the public interest, intervene in proceedings before the Tribunal under this Part.

110—Power to amend or set aside decisions or orders

The Tribunal may amend or set aside a decision or order of the Tribunal—

(a) by consent of the parties; or

(b) if the interests of justice require that the decision or order be amended or set aside.

111—Regulations concerning medical evidence

(1) The regulations may make provision for or with respect to—

(a) the disclosure, by the furnishing of copies of reports or otherwise, of the nature of the expert medical evidence to be given in evidence before the Tribunal (including the exclusion of any such evidence for non-compliance with any requirement for the disclosure of the nature of the evidence); and

(b) the disclosure of medical reports (including X-rays and the results of other tests) (including the exclusion of any such medical report for non-compliance with any requirement for the disclosure of the medical report).

(2) Subsection (1) does not limit any other power of the Tribunal in relation to determining the procedures of the Tribunal, regulating proceedings before the Tribunal, or making rules under the *South Australian Employment Tribunal Act 2014*.

112—Payment to child

(1) Although a party to proceedings before the Tribunal may be a child under a legal disability, the Tribunal may order the payment of money to that child.

(2) If such an order is made, a receipt given by the child is a valid discharge for the person to whom it is given.

Part 7—Special jurisdiction to expedite decisions

113—Special jurisdiction

A worker or employer who believes there has been undue delay in deciding a claim or other matter affecting the worker or employer (being a claim or matter that would, once determined or decided, constitute a reviewable decision) may apply to the Tribunal, in the manner and form prescribed by regulation, for expedited determination of the matter.

114—Timing of application

An application for expedited determination of a matter cannot be made until at least 10 business days after the day the matter was placed before the decision-maker whose decision is required.

115—Powers of Tribunal on application

(1) On an application for expedited determination of a matter, the Tribunal may—

(a) give directions the Tribunal considers necessary to expedite the determination of the matter; or

(b) decide the matter itself.

(2) A person to whom a direction is given by the Tribunal under subsection (1) must comply with the direction.

Maximum penalty: $10 000.

(3) Prosecution of non-compliance as an offence does not prejudice enforcement of the direction in other ways.

(4) If the Tribunal decides a claim under this section, the decision is to be treated as a decision of the relevant compensating authority.

116—Costs

Regulations may be made about the costs of proceedings under this Part.

Part 8—Independent medical advice

Division 1—Interpretation

117—Interpretation

In this Part—

medical question means a question about any of the following matters:

(a) a permanent impairment matter;

(b) the nature and extent of any hearing loss suffered by a worker;

(c) any other matter that the Tribunal or a court considers should be subject to assessment or advice under this Part for the purposes of particular proceedings.

Division 2—Appointment of independent medical advisers

118—Appointment of independent medical advisers

(1) The Minister may appoint a medical practitioner as an independent medical adviser for the purposes of this Act.

(2) For the purposes of appointing medical practitioners as independent medical advisers, the Minister must establish a selection committee comprised of persons—

(a) nominated by the Advisory Committee (who may, but need not be, members of the Advisory Committee); or

(b) nominated by 1 or more professional associations representing medical practitioners determined by the Minister,

(with the number of persons to be nominated by each entity to be determined by the Minister).

(3) A member of the selection committee will be appointed on terms and conditions determined by the Minister.

(4) The proceedings of the selection committee will be—

(a) specified by the Minister; or

(b) to the extent that a matter is not specified under paragraph (a)—determined by the selection committee.

(5) The selection committee will recommend medical practitioners for appointment by the Minister as independent medical advisers.

(6) In connection with the operation of subsection (5), the selection committee must invite expressions of interest in accordance with the regulations.

(7) Subsection (6) does not apply if the Minister is simply seeking the advice of the selection committee about whether a particular medical practitioner should be re-appointed as an independent medical adviser at the expiration of a term of office.

119—Independent medical advisers

A medical practitioner appointed under section 118 (other than to the selection committee) will be called an *independent medical adviser* for the purposes of this Act.

120—Related appointment provisions

(1) A person appointed as an independent medical adviser will be appointed on terms and conditions, and for a term (not exceeding 3 years), determined by the Minister and, on the expiration of a term of office, is eligible for re-appointment.

(2) The office of a person appointed as an independent medical adviser becomes vacant if the person—

(a) resigns by written notice addressed to the Minister; or

(b) is removed from office by the Governor for—

(i) breach of, or non-compliance with, a term or condition of appointment; or

(ii) mental or physical incapacity to carry out duties of office satisfactorily; or

(iii) misconduct; or

(iv) neglect of duty; or

(v) incompetence; or

(c) completes a term of office and is not re-appointed; or

(d) ceases to be registered as a medical practitioner under the *Health Practitioner Regulation National Law*; or

(e) is convicted of an indictable offence or of an offence which, if committed in South Australia, would be an indictable offence; or

(f) is sentenced to imprisonment for an offence.

(3) A person appointed as an independent medical adviser is entitled to fees, allowances and expenses approved by the Governor.

(4) The fees, allowances and expenses are payable out of the Compensation Fund.

(5) An act of an independent medical adviser is not invalid by reason only of any defect in the appointment of a person.

(6) No personal liability attaches to an independent medical adviser acting in good faith and in the exercise or purported exercise of powers or functions under this Part.

Division 3—Referrals

121—Referral by Tribunal or court

(1) The Tribunal or a court may, on its own initiative or an application by a party to proceedings before the Tribunal or court, refer any medical question or questions arising in proceedings before the Tribunal or court to 1 or more independent medical advisers specified by the Tribunal or court for inquiry and report.

(2) In connection with subsection (1)—

(a) the rules of the Tribunal or the court may specify when a medical question must be referred to 1 or more independent medical advisers; and

(b) the selection of an independent medical adviser must be consistent with any principle or process prescribed by the regulations (including any process which determines which independent medical adviser should be used); and

(c) different medical questions may be referred to different independent medical advisers as part of the same proceedings; and

(d) to the extent that a medical question is referred to more than 1 independent medical adviser, any dispute between the independent medical advisers will be resolved in a manner specified or determined by the Tribunal or the court (as the case may be); and

(e) the question or questions to be referred to an independent medical adviser will be framed by the Tribunal or court after inviting submissions from the parties to the proceedings.

122—Powers and procedures on a referral

(1) An independent medical adviser to whom a medical question has been referred under this Division may—

(a) consult with any medical practitioner or other health practitioner who is treating or has treated the worker to whom the proceedings relate (the ***relevant worker***); and

(b) consult with such other persons as the independent medical adviser thinks fit (including another independent medical adviser who has considered or is considering the same or another medical question that relates to the relevant worker); and

(c) call for the production of such information (including medical reports, x-rays and the results of other tests) as the independent medical adviser considers necessary or desirable for the purpose of determining the medical question; and

(d) require the relevant worker to submit himself or herself for examination by the independent medical adviser.

(2) Information (including confidential information) may be disclosed to an independent medical adviser under subsection (1) without the breach of any law or principle of professional ethics.

(3) If a worker refuses to comply with a requirement under subsection (1) or in any way hinders an examination of the worker, the independent medical adviser may refer the matter to the Tribunal or the court (as the case may require).

(4) If the Tribunal or a court, on a referral under subsection (3), considers that a worker has acted unreasonably, the Tribunal or court may, by order—

(a) suspend the worker's rights to recover compensation or damages under this Act with respect to the relevant injury;

(b) suspend the worker's rights to weekly payments,

until—

(c) the worker has complied with any requirements specified by the Tribunal or court; or

(d) the Tribunal or court makes an additional order in relation to the matter.

(5) Any weekly payments that would otherwise be payable during a period of suspension under subsection (4)(b) are forfeited by force of this subsection.

(6) If a medical question relates to any matter that is relevant to the assessment of whole person impairment (including as to whether an impairment is permanent), the following principles are to be taken into account:

(a) an assessment must not be made until the injury has stabilised;

(b) if a worker presents for assessment in relation to injuries which occurred on different dates, the impairments are to be assessed chronologically by date of injury;

(c) impairments from unrelated injuries or causes are to be disregarded in making an assessment;

(d) impairments from the same injury or cause are to be assessed together or combined to determine the degree of impairment of the worker (using any principle set out in the Impairment Assessment Guidelines);

(e) impairment resulting from physical injury is to be assessed separately from impairment resulting from psychiatric injury;

(f) in assessing impairment resulting from physical injury or psychiatric injury, no regard is to be had to impairment that results from consequential mental harm;

(g) in assessing the degree of permanent impairment resulting from physical injury, no regard is to be had to impairment that results from a psychiatric injury or consequential mental harm;

(h) any portion of an impairment that is due to a previous injury (whether or not a work injury or whether because of a pre-existing condition) that caused the worker to suffer an impairment before the relevant injury is to be deducted for the purposes of an assessment, subject to any provision to the contrary made by the Impairment Assessment Guidelines;

(i) assessments are to comply with any other requirements specified by the Impairment Assessment Guidelines.

(7) A number determined under the Impairment Assessment Guidelines with respect to a value of a person's degree of impairment may be rounded up or down according to any principle set out in the Impairment Assessment Guidelines.

(8) Subject to the operation of the preceding provisions, an independent medical adviser may determine any medical question in such manner as the independent medical adviser thinks fit (including by adopting such processes and procedures as the independent medical adviser thinks fit).

(9) An assessment by an independent medical adviser as to any of the following matters is to be taken to be conclusive evidence with respect to the relevant matter in proceedings before the Tribunal or court (as the case may be) unless the Tribunal or court, in the exercise of its adjudicative function, determines otherwise:

(a) a permanent impairment matter;

(b) the nature and extent of any hearing loss suffered by a worker.

(10) The Tribunal or court (as the case may be) may, as it thinks fit, accept any other matter contained in a report furnished by an independent medical adviser as conclusive evidence for the purposes of proceedings before the Tribunal or court, or give any such matter such other weight as the Tribunal or court thinks fit.

(11) Without limiting any other circumstance where it is appropriate to give reasons, the Tribunal or a court must—

(a) when it makes a determination under subsection (9) in the exercise of its adjudicative function; or

(b) when it decides not to accept any matter as conclusive evidence under subsection (10),

give reasons for its determination or decision (as the case requires).

(12) Information given to an independent medical adviser cannot be used in subsequent proceedings unless—

(a) the proceedings are before the Tribunal or a court under this Act; or

(b) the worker consents to the use of the information; or

(c) the proceedings are for an offence against this Act.

Division 4—Related matters

123—Provision of report

(1) An independent medical adviser to whom a medical question is referred under this Part is to prepare a report (or participate in the preparation of a joint report) at the conclusion of his or her consideration of the medical question.

(2) The report is to be in a form specified by the rules of the Tribunal or court (as the case requires) and must—

(a) set out details of the medical question; and

(b) set out the opinion of the independent medical adviser (or advisers) with respect to the question; and

(c) set out the reason or reasons for the opinion; and

(d) set out information about the documents and other reports that have been considered by the independent medical adviser (or advisers); and

(e) set out any other matters that, in the opinion of the independent medical adviser (or advisers), should be considered or investigated.

(3) The report must be furnished to the Tribunal or the court in accordance with the rules of the Tribunal or court within any period specified by the Tribunal or the court (as the case may be).

(4) A report furnished by an independent medical adviser on a referral under this Part is admissible as evidence in proceedings before the Tribunal or a court (and will be received in evidence in accordance with the rules of the Tribunal or court).

124—Competency to give evidence

An independent medical adviser is competent to give evidence as to any matter in a report furnished by the independent medical adviser (and any other relevant matter, as appropriate).

125—Further referrals

The Tribunal or a court may, if it thinks fit, refer any matter (in the nature of a medical question or in connection with a medical question) back to an independent medical adviser who has furnished a report to the Tribunal or court for further report to the Tribunal or court (and then this Division will apply in relation to the reference as if it were a new reference of a medical question).

126—Staff and facilities

The Minister must ensure that independent medical advisers are provided with any staff or facilities required to support the performance of their functions.

127—Recovery of costs

The costs associated with independent medical advisers and any staff or facilities provided under this Part are payable out of the Compensation Fund.

Part 9—Registration and funding

Division 1—Registration of employers

128—Registration of employers

(1) Subject to subsection (2), an employer must not employ a worker in employment to which this Act applies unless the employer is registered by the Corporation.

Maximum penalty: $10 000 for each worker so employed.

(2) An employer is not required to be registered if the employer is exempted by the regulations from the obligation to be registered.

(3) No offence is committed by an employer against this section if the employer applies for registration within 14 days after the obligation to be registered arises.

(4) It is a defence to a prosecution for an offence under subsection (1) in respect of the employment of a particular worker if the court is satisfied that, at the time of the alleged offence, the employer believed on reasonable grounds that the worker's employment was not connected with this State by virtue of the operation of section 10.

(5) If the employer's belief on reasonable grounds was that under section 10 the worker's employment was connected with another State, subsection (4) does not apply unless at the time of the alleged offence the employer had workers compensation cover in respect of the worker under the law of that other State.

(6) In this section—

State includes a Territory;

workers compensation cover means insurance or registration required under the law of a State in respect of liability for statutory workers compensation under that law.

129—Self-insured employers

(1) Subject to this section, an employer or a group of employers may apply to the Corporation for registration as a self-insured employer or as a group of self-insured employers.

(2) An application may not be made under subsection (1) unless—

(a) in the case of an application by an individual employer—

(i) the employer is a body corporate; or

(ii) the employer is an indemnified maritime employer;

(b) in the case of an application by a group—

(i) the members of the group are related bodies corporate or local government corporations; and

(ii) if the members of the group are related bodies corporate—no related body corporate of any member of the group that employs a worker or workers in employment to which this Act applies is not a member of the group.

(3) Where—

(a) an application is made under subsection (1); and

(b) the Corporation is satisfied—

(i) that the employer or the employers constituting the group have reached a standard that, in the opinion of the Corporation, must be achieved before conferral of self-insured status can be considered; and

(ii) that in all the circumstances it is appropriate to do so,

the Corporation may register the employer or the group as a self-insured employer or a group of self-insured employers.

(4) Without limiting subsection (3), the Corporation may reject an application under subsection (2)(a) if the employer is a member of a group comprised of related bodies corporate or local government corporations.

(5) A registration under this section—

(a) is subject to—

(i) a condition that the self-insured employer must adopt and apply the service standards set out in Schedule 5 (but these standards do not, in themselves, give rise to substantive rights or liabilities (compared to rights or liabilities established or prescribed under other relevant provisions of this Act)); and

(ii) a condition that the self-insured employer must not exercise any power or discretion delegated to the self-insured employer under this Act unreasonably; and

(iii) such other terms and conditions as the Corporation determines from time to time or as are prescribed by the regulations; and

(b) if the self-insured status was conferred on the ground that the employer is an indemnified maritime employer—is subject to a condition limiting the effect of the conferral to the workers, or a specified class of the workers, to whom the relevant indemnity relates; and

(c) if self-insured status was conferred on a group of related bodies corporate—is subject to the condition that there is at no time a related body corporate to any member of the group that employs a worker or workers in employment to which this Act applies that is not a member of the group; and

(d) is subject to a condition that the self-insured employer will comply with any code of conduct for self-insured employers determined by the Corporation from time to time and published in the Gazette; and

(e) takes effect on a date fixed by the Corporation; and

(f) subject to this section—

(i) has effect for an initial period (not exceeding 3 years) determined by the Corporation; and

(ii) may, on further application to the Corporation, be renewed from time to time for a further period (not exceeding 5 years) determined by the Corporation at the time of the renewal.

(6) The Corporation may, at any time, on the application of 2 or more self-insured employers, amend the registration of each self-insured employer so as to form a group on the ground that they are now related bodies corporate.

(7) The Corporation may, at any time, on application by a self-insured employer or a group of self-insured employers, amend the registration of the group in order to—

(a) add another body corporate to the group (on the ground that the body corporate is now a related body corporate); or

(b) remove a body corporate from the group (on the ground that the body corporate is no longer a related body corporate); or

(c) amalgamate the registration of 2 or more groups (on the ground that all the bodies corporate are now related bodies corporate); or

(d) divide the registration of a group into 2 or more new groups (on the ground that the bodies corporate have separated into 2 or more groups of related bodies corporate).

(8) For the purposes of subsection (2)(b) and (7), a foreign company that is a holding company cannot be a member of a group (and, to the extent that is relevant, will be disregarded when determining the bodies corporate that will be related bodies corporate for the purposes of the grouping provisions of this section (including, if the Corporation thinks fit, so as to exclude also any subsidiary of such a holding company)).

(9) The Corporation may revoke the registration of a self-insured employer or group of self-insured employers, or reduce the period of registration, if the employer, or a member of the group, (as the case requires) breaches or fails to comply with this Act or a term or condition of registration.

(10) The Corporation may revoke the registration of a self-insured employer under an agreement between the Corporation and the employer (which may include terms or conditions that the employer must comply with before the revocation can take effect).

(11) In deciding whether to grant, renew, revoke, or reduce the period of registration as a self-insured employer or group of employers under this section, the Corporation may have regard to such matters as it considers relevant and will have regard to the following:

(a) the number of employees employed by the employer or group;

(b) whether the employer or group is, and is likely to continue to be, able to meet its liabilities;

(c) the resources that the employer or group has for the purpose of administering claims under this Act;

(d) the incidence and severity of work injuries arising from employment by the employer or employers;

(e) the effect, or likely effect, of the working conditions under which workers are employed by the employer, or any of the employers, on the health and safety of those workers;

(f) the record of the employer or employers in relation to the rehabilitation of injured workers and achieving their recovery and return to work;

(g) the record of the employer or employers in providing suitable employment to workers who suffer work injuries;

(h) the views of any industrial association that has, in the opinion of the Corporation, a proper interest in the matter,

but once an employer or group has been registered as self-insured, the Corporation must not, in deciding whether to renew the registration, consider the effect of the registration on the Compensation Fund.

(12) If employers are registered as a group of self-insured employers, 1 of those employers nominated in the application for registration will, for the purposes of this Act, be treated as the employer of all workers employed by the various members of the group.

(13) The Corporation may, on application by a group of self-insured employers, accept the nomination of another member of the group as the relevant employer under subsection (12).

(14) Despite subsection (12), the members of the group are jointly and severally liable to satisfy the liabilities under this Act of the member referred to in subsection (12).

(15) In this section—

foreign company has the same meaning as it has under the *Corporations Act 2001* of the Commonwealth;

holding company has the same meaning as it has under the *Corporations Act 2001* of the Commonwealth;

indemnified maritime employer means an employer that has the benefit of an indemnity granted by a member of the International Group of Protection and Indemnity Associations;

related bodies corporate means—

(a) in the case of corporations—bodies corporate that are related bodies corporate under section 50 of the *Corporations Act 2001* of the Commonwealth;

(b) in the case of any other kind of bodies corporate—bodies corporate that are associated entities under section 50AAA of the *Corporations Act 2001* of the Commonwealth.

130—Crown and certain agencies to be self-insured employers

(1) Subject to subsection (2), the Crown and any agency or instrumentality of the Crown will be taken to be registered as self-insured employers.

(2) The Governor may, by proclamation, declare that an agency or instrumentality of the Crown is not to be regarded as a self-insured employer, and in that event the agency or instrumentality will not be regarded as a self-insured employer.

(3) The Governor may, by further proclamation, vary or revoke a proclamation under subsection (2).

(4) In this section—

agency or instrumentality of the Crown includes any body, or body of a specified class, prescribed by regulation for the purposes of this definition.

(5) A regulation for the purposes of subsection (4) may, if the regulation so provides, take effect from a day antecedent to the day on which it is made.

131—Applications for registration

(1) An application for registration as an employer, a self-insured employer or a group of self-insured employers—

(a) must be made in the designated manner and the designated form; and

(b) must be accompanied by the prescribed information; and

(c) in the case of an application for registration of a group of self-insured employers must nominate a member of the group as the employer who is, for the purposes of this Act, to be treated as the employer of all workers employed by the various members of the group.

(2) An application for registration as a self-insured employer or group of self-insured employers must be accompanied by a fee fixed in accordance with the regulations.

132—Changes in details for registration

An employer must, in prescribed circumstances and within a period prescribed by the regulations, provide to the Corporation in a designated manner and form information relating to a change in any details or information relevant to—

(a) the registration of the employer; or

(b) the activities or circumstances of the employer.

133—Ministerial appeal on decisions relating to self-insured employers

(1) If the Corporation—

(a) refuses the registration of an employer or group of employers as a self-insured employer or group of self-insured employers; or

(b) grants or renews registration as a self-insured employer or group of self-insured employers for a period of less than 3 years; or

(c) reduces the period of registration of an employer or group of employers as a self-insured employer or group of self-insured employers; or

(d) cancels the registration of an employer or group of employers as a self-insured employer or group of self-insured employers,

the employer or employers may appeal to the Minister against that decision.

(2) The appeal must be commenced within 1 month after the employer or employers receive notice of the Corporation's decision unless the Minister allows an extension of time for the appeal.

(3) If an employer or a group of employers appeals to the Minister against a decision of the Corporation to refuse to renew, or to cancel, the registration of the employer or employers as a self-insured employer or group of self-insured employers, the Corporation may extend or renew the registration of the employer or employers for a period of up to 3 months (pending resolution of the appeal).

(4) The Minister may (but is not obliged to) permit an appellant to appear personally or by representative before the Minister on an appeal.

(5) The Minister has an absolute discretion to decide an appeal under this section as the Minister thinks appropriate.

(6) If the Minister decides in favour of the appellant, the Minister must furnish the Corporation with a statement of the reasons for the decision.

Division 2—Delegation to self-insured employers

134—Delegation to self-insured employers

(1) Subject to this Act, the following powers and discretions of the Corporation, insofar as they are exercisable in relation to workers of a self-insured employer, are delegated to the self-insured employer:

(a) the powers and discretions under the following sections:

section 13

section 21

section 24

section 25

section 28(4)

section 31

section 32

section 33 (but not section 33(12) or (15))

section 39

section 40

section 45

section 46

section 47

section 48

section 50(7)

section 51

section 53

section 54

section 55(6)

section 56

section 58

section 59

section 60

section 61

section 62

section 63

section 66

section 193

section 201;

(b) any other prescribed powers and discretions.

(2) Delegated powers and discretions referred to in subsection (1) will not be exercised by the Corporation in relation to the workers of the self-insured employer.

(3) Subject to this section, the Corporation must not overrule or interfere with a decision of a self-insured employer made in the exercise of delegated powers or discretions.

(4) A decision of a self-insured employer made pursuant to a power or discretion delegated under subsection (1) will have the same force and effect as a decision of the Corporation and will be subject to review and appeal in the same way as a decision of the Corporation.

(5) A reference to the Corporation in the provisions of this Act referred to in subsection (1) will, in relation to any matter over which a self-insured employer has delegated powers or discretions, be construed as a reference to that self-insured employer.

(6) If the Corporation would, but for this section, be required under a provision of this Act referred to in subsection (1) to take any action or do any thing in relation to a worker of a self-insured employer—

(a) responsibility for taking the action or doing the thing rests with the self-insured employer; and

(b) any cost incurred in connection with taking the action or doing the thing is to be borne by the self-insured employer.

(7) If a self-insured employer exercises a power or discretion delegated under subsection (1) unreasonably, the Corporation may withdraw (in whole or in part) the delegation effected by subsection (1).

(8) If an employer ceases to be registered as a self-insured employer under this Act, the delegation to the employer under this section will, if the Corporation so determines, continue to such extent as the Corporation thinks fit in relation to injuries that occurred before that cessation (and any act or omission of the employer within the scope of the delegation will be taken for the purposes of this Act to be the act or omission of a self-insured employer).

Division 3—Compensation Fund

135—Compensation Fund

(1) The *Compensation Fund* continues in existence and will continue to be maintained by the Corporation.

(2) The Compensation Fund will consist of—

(a) amounts received from the imposition of premiums, supplementary payments or fees under this Part; and

(b) any income and accretions produced by the investment of money from the Fund; and

(c) any money advanced to the Corporation for the purposes of the Fund; and

(d) other money received by the Corporation under this Act or in the administration of this Act; and

(e) to the extent provided by regulation—money received by the Corporation under, or in the administration of, another Act.

(3) The Compensation Fund will be applied towards—

(a) the payments of compensation that the Corporation is liable to make under this Act; and

(b) the payments of damages for which the Corporation is liable to make on account of indemnifying employers as their insurer under this Act (whether under Part 5 or otherwise); and

(c) any payment that the Corporation is required to make to a self-insured employer under section 64; and

(d) the costs incurred by the Corporation in performing its functions or discharging any liability under this Act; and

(e) any costs incurred by the Minister or the Crown if a decision or process of the Minister under section 133 becomes the subject of judicial proceedings; and

(f) a contribution towards the system of dispute resolution under this Act (including the costs associated with independent medical advisers) determined by the Minister from time to time after consultation with the Treasurer and the Corporation; and

(g) the costs incurred by the Ombudsman in carrying out the Ombudsman's functions under this Act; and

(h) a contribution towards advocacy services for the benefit of injured workers determined by the Minister from time to time after consultation with the Corporation; and

(i) any costs to be paid out of the Fund under another provision of this Act (including any amounts to be paid out of the Return to Work Facilitation Fund under Part 10); and

(j) to the extent provided by regulation—the costs incurred by the Corporation in carrying out its functions under another Act; and

(k) any payment that the Corporation is required to make under section 27A of the *Return to Work Corporation of South Australia Act 1994*; and

(l) any payment that the Corporation is required to make under the *Work Health and Safety Act 2012*.

(4) The Corporation may invest money that is not immediately required for the purposes of the Compensation Fund as the Corporation thinks fit.

(5) Subject to subsection (6), in deciding how to invest funds that are available for investment, the Corporation must endeavour to achieve the highest possible rates of return.

(6) The Corporation is not required to comply with subsection (5) if the board unanimously decides, in relation to certain funds, to invest those funds at a lesser rate of return but so as to promote the economy of the State.

Division 4—Premiums

Subdivision 1—Preliminary

136—Interpretation

In this Division—

class of industry includes a subclass;

remuneration includes payments made to or for the benefit of a worker which by the determination of the Corporation constitute remuneration but does not include payments determined by the Corporation not to constitute remuneration.

137—Average premium rate

(1) Subject to subsection (2), the Corporation must, in setting premiums under this Division in relation to a financial year, seek to achieve an average premium rate that does not exceed 2%.

(2) If the Corporation determines that it will be unable to achieve the rate referred to in subsection (1) in relation to a particular financial year, the Corporation must furnish a report to the Minister that—

(a) sets out the reasons for not being able to achieve that rate; and

(b) provides information about—

(i) the rate that is to apply in relation to that financial year; and

(ii) the Corporation's preliminary assessment of its ability to achieve the rate referred to in subsection (1) in the next financial year.

(3) The Minister must cause a copy of a report under subsection (2) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

Subdivision 2—Premiums (terms and conditions)

138—Premiums (terms and conditions)

(1) The Corporation may, from time to time, after consultation with the Minister, publish in the Gazette a set of terms and conditions that will apply in relation to the calculation, imposition and payment of premiums for the purposes of this Act (and these terms and conditions will be referred to as ***RTWSA premium provisions***).

(2) The Corporation must ensure that RTWSA premium provisions operate on the basis that the costs of all claims made by an employer's workers that are relevant to the RTWSA premium provisions in force at the time (including claims in respect of damages but not including claims in respect of unrepresentative injuries) are taken into account in relation to the calculation of premiums.

(3) RTWSA premium provisions may—

(a) apply differently according to—

(i) categories of employers; and

(ii) different factors of a specified kind; and

(b) authorise any matter to be determined, applied or regulated by a specified person or body.

(4) Without limiting any other provision, RTWSA premium provisions may specify various principles, weights, adjustments, caps, assumptions or exclusions that will apply in relation to the constitution or determination of remuneration or the costs of claims.

(5) RTWSA premium provisions will not apply to—

(a) a self-insured employer; or

(b) an employer who is exempt from the requirement to be registered under Division 1.

Subdivision 3—Premiums (general principles)

139—Liability to pay premiums

(1) Subject to this Part, an employer will be liable to pay, in relation to each period specified by the RTWSA premium provisions or a RTWSA premium order that applies in relation to the employer, a premium or premiums in accordance with the requirements of this Act.

(2) An employer—

(a) who is a self-insured employer; or

(b) who is exempt from the requirement to be registered under Division 1,

is not required to pay a premium under this Division.

(3) A person who ceases to be an employer may be entitled to a partial refund of any premium that has been paid calculated in accordance with any relevant provision of the RTWSA premium provisions or a RTWSA premium order that applies in relation to the employer.

(4) An employer who is in breach of the requirement to be registered under this Act will, in addition to any other penalty, be liable to a fine fixed by the Corporation not exceeding 3 times the amount of premium that would have been payable under this Act had the employer been registered as required.

(5) The Corporation may for any proper reason remit a fine imposed under subsection (4) wholly or in part.

(6) The imposition of a fine under subsection (4) does not satisfy or affect any liability or requirement to pay any premium under this Act.

(7) Nothing in this section affects the adjustment of a premium or the imposition of a fine under another provision of this Act.

140—Employer categories

(1) Subject to subsection (2), the Corporation may from time to time, by notice in the Gazette, divide employers into various categories.

(2) Despite a notice applying under subsection (1), the Corporation may, if it considers it appropriate to do so and after applying criteria or factors published as part of the RTWSA premium provisions, assign a particular employer to a category that is different to the category that would otherwise apply under subsection (1).

141—Classes of industry

(1) The Corporation may, for the purposes of the calculation of premiums, divide the industries carried on in the State into various classes.

(2) The Corporation may determine any question as to the class or classes of industry in which an employer employs workers.

(3) In determining the class or classes of industry in which an employer employs workers the following provisions will be applied:

(a) if the employer employs a worker in 2 or more classes of industry—

(i) the worker will, subject to any determination by the Corporation to the contrary, be treated as if solely employed in the class of industry in which he or she is predominantly employed; and

(ii) if it is not possible to determine which is the predominant class, the worker will be treated as if solely employed in a class of industry determined by the Corporation;

(b) if the employer employs workers in different classes of industry all workers employed by the employer will, if the Corporation so determines, be treated as engaged in the predominant class of industry;

(c) if the employer employs workers at 2 or more workplaces, all workers employed at a particular workplace will, if the Corporation so determines, be treated as engaged in the predominant class of industry conducted at that workplace;

(d) if the employer employs workers in different classes of industry the Corporation may for the purposes of industry classification at a workplace treat the workers as engaged in 2 or more classes of industry;

(e) if the employer employs workers at a workplace for the purpose of supporting a predominant class of industry carried on at 1 or more other workplaces at which the employer employs workers, that predominant class of industry will, if the Corporation so determines, apply in relation to the first-mentioned workplace;

(f) in determining a predominant class of industry (if relevant), the Corporation will have regard to—

(i) the importance within the employer's total operations of each class of industry in which workers are employed; and

(ii) any other factor determined to be relevant by the Corporation.

(4) The Corporation may, as it thinks fit, review and revise a determination previously made under or for the purposes of this section.

(5) A revision may be made under subsection (4) at any time (including in respect of a period that is underway).

142—Industry rates and base premiums

(1) The Corporation must, in relation to each class of industry, fix a rate (expressed as a percentage and to be called the ***industry premium rate***) that is to be applied for the purposes of determining base premiums under subsection (4).

(2) The rates under subsection (1)—

(a) must be fixed by the Corporation by notice in the Gazette; and

(b) may be varied by the Corporation by subsequent notice in the Gazette.

(3) In fixing the percentage applicable to a particular class of industry the Corporation must apply any criteria or principles specified by the regulations.

(4) A base premium under this Act, in its application to a particular industry, is determined as follows:

$$BP = remuneration \times industry\ premium\ rate$$

where

BP is the base premium

remuneration is the remuneration payable by an employer to workers employed in the particular industry

industry premium rate is the industry premium rate for the relevant class of industry.

Subdivision 4—Premiums (calculation and application)

143—Premium orders

(1) A premium payable by an employer in relation to a particular period (other than an employer who is not liable to pay a premium under this Division) will be—

(a) determined in accordance with a RTWSA premium order under this section; or

(b) to the extent that a RTWSA premium order does not apply to the employer—the aggregate base premiums applying to that employer in respect of all classes of industry in which the employer employs workers (subject to any adjustments or requirements that apply in the circumstances).

(2) For the purposes of subsection (1)(a), the Corporation may, after consultation with the Minister and applying any principle specified by the Minister for the purposes of this section, fix the manner in which a premium payable by an employer (or a person who proposes to become an employer) will be calculated.

(3) The Corporation must, for the purposes of subsection (2), publish an order (or orders) in the Gazette (and any such order will be referred to as a ***RTWSA premium order***).

(4) A RTWSA premium order will take effect from the commencement of a financial year specified by the order (and will then apply, including in relation to a succeeding financial year, until superseded by another RTWSA premium order).

(5) The Corporation must ensure that a RTWSA premium order operates on the basis that the costs of all claims made by an employer's workers in the relevant period (including claims in respect of damages but not including claims in respect of unrepresentative injuries) are taken into account in relation to the determination of the premium payable by the employer.

(6) A RTWSA premium order may—

(a) apply generally or be limited in its application by reference to specified factors or exceptions; and

(b) apply differently according to—

(i) categories of employers; and

(ii) different factors of a specified kind; and

(c) authorise any matter to be determined, applied or regulated by a specified person or body,

or may do any combination of these things.

(7) Without limiting a preceding subsection, a RTWSA premium order may—

(a) apply any principle relevant to the claims experience of a particular category or class of employer, or the size of an employer (after applying such principles or assumptions as the Corporation thinks fit); and

(b) fix and apply various principles, weights, adjustments, caps, limits (including limits on the reduction of premiums), assumptions or exclusions according to specified factors; and

(c) without limiting any other provision, specify any adjustment or assumption relating to the remuneration paid to workers over a particular period (including a period into the future); and

(d) make provision with respect to liabilities for damages under Part 5; and

(e) allow employers who satisfy any specified criteria, on application and at the discretion of the Corporation, to pay a premium determined by the Corporation according to an alternative set of principles—

(i) specified in the order; or

(ii) specified in another RTWSA premium order that applies in the circumstances; or

(iii) agreed between the Corporation and the employer; and

(f) require that employers of a specified class must provide a deposit, bond or guarantee, or some other form of security, specified in the order; and

(g) make any other provision or impose any other requirement prescribed by the regulations.

(8) Subject to any remission or reduction of premium granted by the Corporation, where—

(a) the amount of premium payable by an employer in respect of a designated period would, apart from this subsection, be less than the designated minimum premium; or

(b) an employer is registered but no premium would, apart from this subsection, be payable by the employer for a designated period,

the premium payable by the employer for the designated period is the designated minimum premium.

(9) For the purposes of subsection (8), the Corporation may, from time to time, as part of the RTWSA premium provisions, fix—

(a) the designated period; and

(b) the designated minimum premium.

(10) The Corporation may, if it considers that there is an error in a RTWSA premium order, after consultation with the Minister, amend the RTWSA premium order by notice in the Gazette.

(11) A notice under subsection (10) may, if the notice so provides, take effect from a date that is earlier than its date of publication (being on or after the date on which the relevant RTWSA premium order took effect).

144—Premium stages

(1) A premium in relation to a particular period (being a period determined by the Corporation) may be constituted by—

(a) an ***initial premium*** calculated on the basis of estimates and assumptions made at, or in relation to, the beginning of the period after applying any principles specified by the Corporation in the RTWSA premium provisions or in a RTWSA premium order;

(b) an ***adjusted premium*** at any time during the period based on applying any principles or requirements specified by the Corporation in the RTWSA premium provisions or in a RTWSA premium order;

(c) a ***hindsight premium*** calculated on the basis of actual amounts and information known or determined by the Corporation at the end of the period after applying any principles or requirements specified by the Corporation in the RTWSA premium provisions or in a RTWSA premium order.

(2) Subject to this section, an initial premium will be payable by a date specified by the Corporation for the purposes of this subsection.

(3) The Corporation may adjust a premium at any time during the relevant period and any amount that becomes due on account of that adjustment (the adjusted premium) will, subject to this section, be payable by a date specified by the Corporation for the purposes of this subsection.

(4) A hindsight premium will be payable after the end of the relevant period by a date specified by the Corporation for the purposes of this subsection (unless a hindsight premium does not need to be paid).

(5) If the Corporation so allows, an employer may elect to pay an initial premium or an adjusted premium by instalments, at such times and of such amounts as the Corporation may determine.

(6) Subject to this Act, if the initial premium, and an adjusted premium (if any), paid by an employer in relation to a particular period exceed the employer's liability to pay premium for that period, the Corporation may at the Corporation's discretion—

(a) refund the difference to the employer; or

(b) set off the difference against existing or future liabilities of the employer to make payments of premium under this Part.

(7) The Corporation may grant discounts or other incentives in order to encourage the payment of any premium in advance.

(8) The Corporation may, in prescribed circumstances, remit any premium payable by an employer under this section wholly or in part.

(9) This section applies subject to—

(a) any alternative arrangements agreed between the Corporation and an employer as part of an alternative set of principles applied under section 143(7); or

(b) any alternative requirements specified by the Corporation (by notice to a particular employer or by notice in the Gazette); or

(c) without limiting paragraph (a) or (b), any alternative arrangements agreed between the Corporation and the employer that allow the employer to pay any premium on aggregate remuneration paid during a preceding period and after taking into account any other matter or factor specified by the Corporation for the purposes of this paragraph.

(10) A notice under subsection (9)—

(a) may be varied by the Corporation from time to time by further notice; and

(b) will have effect according to its terms.

145—Grouping provisions

(1) For the purposes of this section, 2 or more employers will, if the Corporation so determines, constitute a group if—

(a) they are capable of being treated as a member of a group under the *Payroll Tax Act 2009*; or

(b) they are related in some other way.

(2) Where 2 or more employers constitute a group—

(a) unless the Corporation otherwise determines, each employer in the group will be liable to pay premiums in accordance with a RTWSA premium order under this Division (rather than on the basis of aggregate base premiums); and

(b) the Corporation may apply any claims experience, rating or other principle to all members of the group on a combined basis (rather than on an individual basis) in accordance with the provisions of a RTWSA premium order; and

(c) the Corporation may aggregate the employers in such manner (in any way or for such other purposes) as the Corporation thinks fit under a RTWSA premium order (including by treating 1 employer within the group as if the employer were the employer of all workers employed by the members of the group or by rating them together or according to a common factor).

(3) Despite being grouped, each employer will be taken to be subject to the relevant RTWSA premium provisions in its own right (but with premiums being aggregated or divided according to principles specified in a RTWSA premium order).

(4) The employers in a group are jointly and severally liable for the payment of premiums attributable to the group.

(5) This section applies subject to any alternative arrangements agreed between the Corporation and the members of the group of employers as part of an alternative set of principles applied under section 143(7)(e).

(6) The Corporation may, if it is satisfied that 2 or more employers who should have been grouped under this section have not been so grouped on account of false or misleading information, or insufficient or defective information, provided to the Corporation—

(a) make any determination or redetermination, and impose any premium, on a retrospective basis; and

(b) impose on each employer a fine (not exceeding an amount calculated under the regulations) fixed by the Corporation.

(7) The Corporation may for any proper reason remit a fine imposed under subsection (6)(b) wholly or in part.

Division 5—Self-insured employers—fees

146—Self-insured employers—fees

(1) A self-insured employer is liable to pay a fee to the Corporation under this section.

(2) The fee payable by a self-insured employer will be a percentage of the base premium that would have been payable by the employer if the employer were not registered as a self-insured employer and liable to pay a base premium under this Part and will be fixed by the Corporation with a view to raising from self-insured employers—

(a) a fair contribution towards the administrative expenditure of the Corporation; and

(b) a fair contribution towards the cost of recovery and return to work funding; and

(c) a fair contribution towards the costs of the system of dispute resolution established by this Act (including the costs associated with independent medical assessors); and

(d) a fair contribution towards the costs associated with the operation of Part 8; and

(e) a fair contribution towards actual and prospective liabilities of the Corporation arising from the insolvency of employers and the other liabilities of the Corporation as an insurer of last resort.

(3) If the Corporation is satisfied that there are good reasons for differentiating between different self-insured employers or classes of self-insured employers, the percentage on which the fee for self-insured employers is based may vary from self-insured employer to self-insured employer or from class to class.

(4) If the measures taken by a self-insured employer—

(a) to reduce the incidence of work related traumas and injuries; and

(b) to provide for the recovery or return to work of workers who have suffered compensable injuries; and

(c) to provide for the administration of claims,

conform to or exceed standards determined by the Corporation for the purposes of this subsection, the Corporation may grant to the self-insured employer such remission of the fee that would otherwise be payable by the self-insured employer as the Corporation thinks fit.

(5) A fee payable under this section must be paid by a date specified by the Corporation.

Division 6—Remissions and supplementary payments

147—Remissions and supplementary payments

(1) Subject to this section, the Corporation may, in relation to a particular employer, after having regard to 1 or more of the matters specified under subsection (2) (being a matter that the Corporation determines to be appropriate and relevant)—

(a) grant the employer a remission of part of a premium or fee that would otherwise be payable by the employer; or

(b) impose a supplementary payment on the employer (to be paid in addition to the premiums or fees payable by the employer under this Part).

(2) The following matters are specified for the purposes of subsection (1):

(a) the adequacy or inadequacy of measures taken by the employer to reduce the incidence of work related traumas and injuries;

(b) the incidence or costs of claims for work injuries suffered by the employer's workers;

(c) the recovery and return to work facilities or services for injured workers provided by the employer;

(d) the absence or inadequacy of recovery and return to work facilities or services provided by the employer;

(e) the employer's practices and procedures in connection with the appointment and work of a return to work co-ordinator under Part 3 (including with respect to compliance with any relevant guidelines published by the Corporation for the purposes of section 26);

(f) the fact that the employer has not been paying a worker who suffers a work injury the wage to which the worker is entitled under any law (including a law of the Commonwealth) or under any award or industrial agreement;

(g) the employer's practices as to the retention, employment or re-employment of injured workers (and, in particular, any failure on the employer's part to provide, in accordance with this Act, employment to a worker who has suffered a work injury in the employer's employment or any breach of this Act that is constituted by the employer terminating a worker's employment with the employer);

(h) any other matter (whether similar or dissimilar to those referred to above) that the Corporation determines to be appropriate and relevant.

(3) The following provisions apply in connection with subsections (1) and (2):

(a) a reference to an employer extends to another employer who is linked to the employer through a transfer of business;

(b) the matters referred to in paragraphs (a) to (g) (inclusive) of subsection (2) are not intended to establish any pattern or principle that must be applied by the Corporation under paragraph (h) of that subsection;

(c) if the Corporation imposes a supplementary payment, the Corporation may require the employer to observe conditions stipulated by the Corporation in a written notice to the employer and if an employer fails to comply with such a condition then the Corporation may impose on that employer a further supplementary payment;

(d) the Corporation may establish return to work programs for injured workers on terms under which an employer who participates in the program by providing employment for such workers and complying with other conditions of the scheme determined is entitled to a remission of premium that would otherwise be payable by the employer on a basis set out in the scheme.

(4) The Corporation may, for any proper reason—

(a) adjust or revoke a remission of any premium or fee granted, or a supplementary payment imposed, under this section; or

(b) vary or revoke a condition imposed under this section.

(5) A remission or supplementary payment will be provided or payable in accordance with a scheme approved by the Minister for the purposes of this section.

Division 7—Administration of premiums/fees scheme

148—Interpretation

In this Division—

statutory payment means any of the following under this Part:

(a) a premium;

(b) a fee;

(c) a supplementary payment.

149—Provision of information (initial calculations)

(1) Subject to this Division, an employer must, by a date in each year specified by the Corporation (which may be specified on an individual or class basis), provide to the Corporation a return in the designated manner and form that sets out the information required by the Corporation (by notice to a particular employer or by notice in the Gazette) for the purposes of the calculation or determination of any statutory payment under this Part.

(2) The information required under subsection (1) may include information in the form of estimates made according to principles specified by the Corporation.

(3) The Corporation may (by notice to a particular employer or by notice in the Gazette)—

(a) specify an estimate or estimates that will apply instead of an estimate specified by an employer under subsection (2);

(b) require that any information provided under this section be verified by statutory declaration.

(4) An estimate specified under subsection (3)(a) may apply, according to a determination of the Corporation—

(a) despite the provision of an estimate by the employer; or

(b) so as to relieve the employer from the requirement to provide an estimate under subsection (2).

(5) If the Corporation specifies an estimate under subsection (3)(a), the amount of the estimate will be used for the purposes of the calculation of any relevant statutory payment under this Part.

(6) The Corporation may, from time to time as the Corporation thinks fit, vary or revoke a notice under subsection (3), or make a new specification or impose a new requirement under subsection (3).

150—Provision of information (on-going requirements)

(1) The Corporation may, from time to time, require an employer to provide to the Corporation in a designated manner and form information (including information in the form of estimates) specified by the Corporation—

(a) relating to a period specified by the Corporation; or

(b) relating to any matter specified by the Corporation; or

(c) on the occurrence of any event specified by the Corporation.

(2) The Corporation may require that any information provided under this section be verified by statutory declaration.

(3) The Corporation may specify an estimate or estimates, or make any determination, that will apply instead of an estimate or any information specified by an employer under subsection (1) (and any such estimate or determination of the Corporation may apply according to its terms).

(4) Information required under this section must be provided to the Corporation within a period determined by the Corporation.

(5) A requirement under this section may be imposed—

(a) under any RTWSA premium provisions or by a RTWSA premium order; or

(b) by notice to a particular employer or by notice in the Gazette.

151—Revised estimates or determinations

(1) The Corporation may, in addition to the preceding sections of this Division, in its absolute discretion—

(a) review and revise an estimate or determination previously made under or for the purposes of this Division; or

(b) correct an error or revise an assessment previously made under or for the purposes of this Division.

(2) In acting under subsection (1), the Corporation may have regard to any matter considered to be relevant by the Corporation.

152—Further adjustments

(1) If the Corporation considers that a statutory payment payable by an employer should be adjusted—

(a) because of a change in—

(i) the category to which the employer belongs; or

(ii) the class of industry or industries in which the employer employs workers; or

(iii) the workplace or workplaces at which the employer employs workers; or

(b) because of the specification of an estimate or the making of a determination under section 149(3); or

(c) because of information provided under section 150; or

(d) because of the outcome of a review under section 151; or

(e) because of any other circumstance prescribed by the regulations,

the Corporation may issue to the employer a notice of adjustment of the statutory payment.

(2) If an additional amount is payable under a notice of adjustment under subsection (1), the additional amount is payable in accordance with a determination of the Corporation (and may be recovered as an unpaid statutory payment in a case of default).

(3) If an excess amount has been paid by the employer on account of a notice of adjustment under subsection (1), the Corporation may at the Corporation's discretion—

(a) refund the excess to the employer; or

(b) set off the excess against existing or future liabilities of the employer for statutory payments under this Part.

(4) An adjustment may be made under this section at any time (including in respect of any period that has been completed or expired or is still underway).

(5) Nothing in this section affects the adjustment of a statutory payment under another provision of this Act.

153—Deferred payment

(1) The Corporation may, on application by an employer, defer the payment of a statutory payment by the employer if satisfied that—

(a) the employer is in financial difficulties; but

(b) the employer has a reasonable prospect of overcoming the financial difficulties and the deferment would assist materially in overcoming those difficulties.

(2) A deferment may be given under this section on conditions that the Corporation considers appropriate having regard to the objects of this Act.

(3) The Corporation may, by written notice to the employer, cancel a deferment under this section.

(4) If a deferment is cancelled, the employer must pay to the Corporation the amount covered by the deferment as required by the notice of cancellation.

(5) Nothing in this section affects the ability of the Corporation to allow an employer to pay a statutory payment by instalments.

154—Recovery on default

(1) If an employer—

(a) fails or neglects to furnish a return when required by or under this Act; or

(b) furnishes a return that the Corporation has reasonable grounds to believe to be defective in any respect,

the Corporation may make an assessment of any statutory payment payable by the employer on the basis of information that has come into the possession of the Corporation and on the basis of estimates made by the Corporation (or both).

(2) If an employer fails to pay a statutory payment, or the full amount of a statutory payment, as required under this Act, the Corporation may make an assessment of the amount payable by the employer (including on the basis of estimates made by the Corporation).

(3) The Corporation may, as part of an assessment under subsection (1) or (2)—

(a) impose on the employer a fine of an amount (not exceeding 3 times the amount assessed) fixed by the Corporation; and

(b) impose penalty interest at the prescribed rate (charged from the date of the original default).

(4) The Corporation may for any proper reason—

(a) remit a fine or penalty interest imposed under subsection (3) wholly or in part; or

(b) allow a fine or penalty interest to be paid in instalments.

(5) An employer to whom a notice of an assessment, a fine or penalty interest under this section is given must pay the amount of the assessment, fine or penalty interest within the time allowed in the notice.

Maximum penalty: $10 000.

(6) A fine under this section is in addition to a fine payable under section 139.

155—Penalty for late payment

(1) If an employer fails to pay a statutory payment as and when required by or under this Act—

(a) the amount in arrears will, unless the Corporation determines otherwise, be increased by penalty interest at the prescribed rate; and

(b) the Corporation may impose on the employer a fine of an amount (not exceeding 3 times the amount assessed) fixed by the Corporation (unless a fine has been imposed under section 154(3) on account of a failure to make a statutory payment).

(2) Subsection (1) does not apply if—

(a) the employer has not, within the period of 12 months immediately before the date on which the statutory payment was required to be paid, been in default for failing to pay a previous statutory payment in accordance with the requirements of this Act; and

(b) the employer pays the statutory payment within 14 days after the day on which the statutory payment was required to be paid under this Act.

(3) The Corporation may for any proper reason—

(a) remit penalty interest or a fine imposed under subsection (1) wholly or in part; or

(b) allow penalty interest or a fine to be paid in instalments.

(4) An employer to whom notice of an assessment of penalty interest or a fine under this section is given must pay the penalty interest or fine within the time allowed in the notice.

Maximum penalty: $10 000.

156—Exercise of adjustment powers

The Corporation may exercise its powers under this Part more than once in relation to any particular period and regardless of whether or not—

(a) any statutory payment has been fixed, demanded or paid; or

(b) a period to which any determination or adjustment may apply has been completed or expired; or

(c) the Corporation has already reviewed or adjusted any estimate, liability or payment under this Part; or

(d) any circumstances have arisen that would, but for this section, stop the Corporation from conducting a review, or making a determination or adjustment.

157—Review

(1) If an employer considers that a decision of the Corporation as to—

(a) the estimate of remuneration that is to be used for the calculation of a statutory payment; or

(b) the fixing or assessment of a statutory payment; or

(c) the imposition of penalty interest or a fine; or

(d) the imposition or variation of a condition of a kind that may lead to the remission or imposition of a supplementary payment,

is unreasonable, the board must, on application by the employer, review the decision.

(2) An application for review does not suspend a liability to pay a statutory payment, penalty interest or a fine.

(3) The review will be conducted, in accordance with procedures determined by the board, by the board itself, or by a committee or person to whom the board has delegated its powers of review under this section, and the board has an absolute discretion as to whether it will permit the employer or a representative of the employer to be heard orally on the review.

(4) On review, the board may—

(a) alter an estimate of remuneration;

(b) alter a statutory payment or an assessment;

(c) quash or reduce penalty interest or a fine;

(d) direct the repayment of amounts overpaid;

(e) quash or vary a condition imposed by the Corporation.

(5) An application under this section for review of a decision of the Corporation—

(a) must, if the decision relates to a class of employers, be made within 4 months after notice of the decision was given; or

(b) must, if the decision relates to an individual employer, be made within 2 months after the employer was given notice of the decision,

unless the board (or its delegate) allows an extension of time for making the application.

158—Payments to be made to Corporation

Any statutory payment, penalty interest or fine (other than a fine for an offence) under this Part will be payable to the Corporation (and may be recovered by the Corporation as a debt in a court of competent jurisdiction).

159—GST

(1) A statutory payment under this Part is subject to any GST payable under *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) and any such GST is additionally payable by an employer.

(2) Subsection (1) does not extend to a fine or any penalty interest imposed under this Part.

160—Transfer of business

(1) In a case involving any transfer of business, the Corporation may, as it thinks fit, apply any claims experience (whether under this Act or at common law) or other factor applying with respect to the business before the transfer to the employer who takes over the business on account of the transfer.

(2) For the purposes of subsection (1), a reference to a business includes a reference to any form of undertaking.

(3) Without limiting subsections (1) and (2), a transfer of business between 2 employers will be taken to occur if there is a connection between the 2 employers under section 311 of the *Fair Work Act 2009* of the Commonwealth.

161—Reasonable mistake about application of Act

(1) Despite any other provision of this Part, if the Corporation is satisfied that the reason for an employer failing to pay the correct amount of a statutory payment is that the employer believed on reasonable grounds that the employer would not be required to pay a statutory payment in respect of a particular worker because that worker's employment was not connected with this State by virtue of the operation of section 10, the employer is not liable to pay a fine or penalty interest on account of that particular failure.

(2) However, if the employer's belief on reasonable grounds under subsection (1) was that under section 10 the particular worker's employment was connected with another State, subsection (1) does not apply unless at the time of the relevant failure the employer had workers compensation cover in respect of the worker under the law of that other State.

(3) In this section—

State includes a Territory;

workers compensation cover means insurance or registration under the law of a State in respect of liability for statutory workers compensation under that law.

Division 8—Miscellaneous

162—Separate accounts

The Corporation must, in a manner and form determined by the Corporation, maintain a separate account for each employer in which the Corporation records—

(a) the premiums, fees and supplementary payments charged to the employer; and

(b) the amounts paid by an employer; and

(c) the costs related to claims (whether under this Act or at common law) arising from employment by the employer, distinguishing the costs related to claims for unrepresentative injuries from the other claims; and

(d) all other costs attributable to the employer; and

(e) any other matter that the Corporation thinks fit.

163—Liability to keep accounts

(1) For the purpose of completing returns in accordance with this Part, an employer must keep—

(a) an accurate account of all remuneration paid or payable to the workers of the employer;

(b) such other information as may be required by the Corporation.

Maximum penalty: $10 000.

(2) If an employer employs workers in more than 1 class of industry, the Corporation may require the employer to keep an account and other information under subsection (1) in respect of each separate class.

(3) Any accounts and other information required to be kept under this section must be kept within the State and in writing in the English language or so as to be readily accessible and convertible into writing in the English language.

(4) This section does not apply so as to require the retention of accounts or other information beyond 7 years or such lesser period as the Corporation may determine in a particular case from the end of the period to which the accounts or other information relates.

164—Person ceasing to be an employer

(1) If a registered employer ceases to be an employer who is required to be registered under this Part, the person must, within 14 days of ceasing to be such an employer—

(a) give written notice in a manner and form approved by the Corporation; and

(b) furnish the Corporation, in a manner and form approved by the Corporation, with such information as the Corporation may require.

(2) The Corporation may cancel the registration of an employer if it is satisfied that the person has ceased to be an employer who is required to be registered under this Part.

(3) The cancellation of registration does not affect any liability that arose before the date of cancellation.

165—Certificate of registration

(1) The Corporation must, on the application of an employer who is registered under this Act, issue a certificate (a ***certificate of registration***) with respect to—

(a) the registration of the employer under this Act; and

(b) the employer's compliance with any requirement to pay premiums under this Part.

(2) A certificate of registration will be in a designated form and will contain information determined by the Corporation.

(3) An employer who is registered under this Act must, within 5 business days of a request to do so by a person authorised under this section to make the request, produce a current certificate of registration for inspection by the person.

Maximum penalty: $1 000.

(4) An employer does not commit an offence against subsection (3) if the employer satisfies the court that the employer took reasonable steps to obtain the relevant certificate within 5 business days of the request for production but was unsuccessful.

(5) A person who fraudulently alters a certificate of registration issued under this section is guilty of an offence.

Maximum penalty: $25 000.

(6) An employer to whom a certificate of registration is issued under this section must notify the Corporation within 5 business days after it is issued if the certificate contains an error as to the information set out in the certificate in relation to the employer.

Maximum penalty: $5 000.

(7) A certificate of registration issued under this section is evidence of the matters that it certifies.

(8) The following persons are authorised to request an employer to produce the employer's current certificate of registration:

(a) any person who has, in the course of or for the purposes of the person's trade or business, contracted with the employer for the employer to carry out the whole or part of any work associated with that trade or business, or who proposes to enter into such a contract;

(b) an authorised officer;

(c) an officer of an industrial association;

(d) a person authorised by the Corporation in writing for the purposes of this section.

166—Insurance of registered employers against other liabilities

(1) An employer who is registered under this Act, and any employer who is not required to be registered because of an exemption under the regulations, is insured by the Corporation, subject to terms and conditions prescribed by regulation, against any liability that may arise apart from this Act in respect of a work injury arising from employment (being employment to which this Act applies) by the employer.

(2) Where an employer participates in the provision of recovery/return to work services or a recovery/return to work plan under this Act, and in consequence of that participation provides work for a person who is not a worker employed by that employer, that person will be taken to be in the employment of the employer for the purposes of subsection (1).

(3) The insurance provided by subsection (1) does not extend to a self-insured employer except in relation to persons of the class referred to in subsection (2).

(4) The insurance provided by subsection (1) does not extend to any liability excluded by the regulations.

167—Corporation as insurer of last resort

(1) If a self-insured employer has ceased to be registered as a self-insured employer under this Act, the Corporation may, in its discretion, undertake, in whole or part, liabilities related to work injuries arising from employment (including such injuries for which the employer is liable at common law under this Act) during the period of that registration.

(2) The Corporation must undertake the liabilities of a former self-insured employer under subsection (1) if the employer—

(a) becomes insolvent; or

(b) ceases to carry on business in the State and fails to make provision that the Corporation considers adequate for dealing with claims, and meeting liabilities and responsibilities related to work injuries, during the period of the employer's registration as a self-insured employer.

(3) The Corporation may recover the amount of liabilities undertaken by the Corporation under this section as a debt due to the Corporation from the employer (and, if the employer is being wound up, a claim for the relevant amount may be made in the winding up).

(4) If a claim is made under subsection (3) for an amount representing liabilities that have not fallen due, or have not been ascertained, as at the date of the claim, the liabilities will be estimated and capitalised in accordance with principles stated, or referred to, in the regulations.

Part 10—Scheme adjustment mechanisms

168—Preliminary

(1) In this Part—

funding level means the percentage obtained by taking the value of the total assets of the Corporation and dividing those by the value of the total liabilities of the Corporation, as determined at the end of a financial year and by applying any relevant provision of the prescribed standard and as reported in the Statement of Financial Position of the Corporation in its annual report for that financial year;

prescribed standard means the *Australian Accounting Standards Board*— AASB Standard 1023.

(2) For the purposes of this Part, a probability of sufficiency will be determined under the prescribed standard.

(3) For the purposes of this Part, an assessment of whether a profit or loss may arise from the insurance operations of the Corporation in respect of a financial year will be determined according to the total comprehensive result reported in the Statement of Comprehensive Income of the Corporation in its annual report, adjusted by the long term investment earnings rate and any relevant economic assumptions for investment profit and the cost of claims.

169—Scheme adjustment/review events

(1) For the purposes of this section, a scheme adjustment/review event occurs if—

(a) in respect of each of 2 consecutive financial years—

(i) the Corporation has achieved a funding level of at least 100% at a probability of sufficiency of 75%; and

(ii) the Corporation has achieved a profit from its insurance operations; and

(b) an actuary reporting on the Corporation's funding level has made a statement under subsection (2).

(2) The statement envisaged by subsection (1)(b) is that, if a scheme bonus period were to be declared under this section in relation to a specified financial year—

(a) that the financial position of the scheme established by this Act would not be expected to fall below a funding level of 100% at a probability of sufficiency of 75%; and

(b) that a funding level of at least 100% at a probability of sufficiency of 75% is considered sustainable over the short to medium term.

(3) If the Minister is satisfied, on the basis of information contained in the Corporation's annual reports for 2 consecutive financial years and a statement provided under subsection (1)(b), that a scheme adjustment/review event has occurred—

(a) unless paragraph (b) applies—the Minister must, by notice in the Gazette, declare a scheme bonus period in relation to the financial year that next follows the financial year immediately succeeding the second of those 2 consecutive financial years; or

(b) if it appears to the Minister that a declaration of a scheme bonus period would result in the average premium rate falling below 1.25%—the Minister must initiate a review of the scheme under subsection (7) (and a scheme bonus period cannot be declared under this section until that review has been completed).

(4) If a scheme bonus period is declared under subsection (3)(a), the board must, in consultation with the Minister, determine an amount that is to be made available for distribution under subsection (5) (the ***prescribed distribution amount***) subject to the qualification that the prescribed distribution amount must take into account factors relevant to the financial liabilities of the Corporation and must not be an amount that would cause, in the assessment of the board—

(a) the financial position of the scheme established by this Act to fall below a funding level of 100% at a probability of sufficiency of 75% in respect of the relevant financial year; or

(b) a loss from the Corporation's insurance operations in respect of the relevant financial year; or

(c) a material risk to the ability of the Corporation to achieve a sustainable funding level of at least 100% at a probability of sufficiency of 75% over the short to medium term.

(5) The prescribed distribution amount will be distributed as follows:

(a) half of the amount must be paid into a separate part of the Compensation Fund called the *Return to Work Facilitation Fund*; and

(b) half of the amount must be applied by the Corporation so as to achieve a reduction in premiums payable under Part 9 Division 4 in respect of the relevant financial year.

(6) An amount standing to the credit of the Return to Work Facilitation Fund will be applied by the Corporation towards—

(a) programs designed to assist workers—

(i) who suffer work injuries; but

(ii) who do not achieve a return to suitable employment after they have recovered (at least to some extent) from any resultant incapacity for work,

to develop skills, knowledge, capacity and capabilities that will enable them to transition into employment or work that is reasonably suited to their circumstances; and

(b) other programs or initiatives approved by the Minister that will benefit workers who have suffered work injuries.

(7) If the Minister initiates a review of the scheme under subsection (3)(b)—

(a) the review must be undertaken by a person appointed by the Minister after consultation with the Corporation; and

(b) the review must examine—

(i) the level of benefits payable to workers under this Act, and the extent or level of services available or provided to workers under this Act, and the extent to which it would be fair and appropriate to increase benefits or services by the amendment of this Act; and

(ii) the costs of employers on account of payments of premiums under Part 9 Division 4 and the impact on premiums of any increase to the level of benefits or services available or provided to workers under this Act; and

(iii) the sustainability of the Compensation Fund over the short to medium term; and

(iv) any other matter determined by the Minister; and

(c) the review must be completed within 12 months of the scheme adjustment/review event.

(8) On the completion of a review under subsection (7)—

(a) the outcome of the review must be embodied in a written report; and

(b) the Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after receiving the report.

(9) To avoid doubt, nothing in this section prevents a series of declarations being made under subsection (3)(a) in relation to rolling periods of consecutive financial years (provided that the other requirements of this section have been satisfied so that such a declaration may be made).

170—Scheme funding/review events

(1) For the purposes of this section, a scheme funding/review event occurs if in respect of each of 2 consecutive financial years the Corporation has been operating at a funding level below 90% at a probability of sufficiency of 75%.

(2) If the Minister is satisfied on the basis of information contained in the Corporation's annual reports for 2 consecutive financial years that a scheme funding/review event has occurred, the Minister must initiate a review of the scheme under subsection (3).

(3) If the Minister initiates a review of the scheme under this section—

(a) the review must be undertaken by a person appointed by the Minister after consultation with the Corporation; and

(b) the review must examine—

(i) the level of benefits payable to workers under this Act, and the extent or level of services available or provided to workers under this Act; and

(ii) the costs to employers on account of payment of premiums under Part 9 Division 4 and the extent to which it would be appropriate to increase the average premium rate (including by the amendment of this Act to change the percentage specified in section 137); and

(iii) the sustainability of the Compensation Fund over the short to medium term; and

(iv) any other matter determined by the Minister; and

(c) the review must be completed within 12 months of the scheme funding/review event.

(4) On the completion of a review under this section—

(a) the outcome of the review must be embodied in a written report; and

(b) the Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after receiving the report.

Part 11—The Minister's Advisory Committee

171—Advisory Committee

(1) The *Minister's Advisory Committee* is established.

(2) The Advisory Committee consists of 9 members appointed by the Governor of whom—

(a) 3 (who must include at least 2 medical practitioners) will be appointed on the Minister's nomination made after consultation with 1 or more professional associations representing medical practitioners, including the Australian Medical Association (South Australia) Incorporated; and

(b) 3 (who must include at least 1 suitable representative of registered employers and at least 1 suitable representative of self-insured employers) will be appointed on the Minister's nomination made after consulting with associations representing employers, including the South Australian Employers' Chamber of Commerce and Industry Inc; and

(c) 3 will be appointed on the Minister's nomination made after consultation with associations representing employees, including the United Trades and Labor Council.

(3) A member of the Advisory Committee will be appointed on conditions, and for a term (not exceeding 3 years), determined by the Governor and, on the expiration of a term of appointment, is eligible for re-appointment.

(4) A member of the Advisory Committee is entitled to fees, allowances and expenses approved by the Governor.

(5) The fees, allowances and expenses are payable out of the Compensation Fund.

(6) The Governor may remove a member from office for—

(a) breach of, or non-compliance with, a condition of appointment; or

(b) mental or physical incapacity to carry out duties of office satisfactorily; or

(c) neglect of duty; or

(d) dishonourable conduct.

(7) The office of a member becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not re-appointed; or

(c) resigns by written notice addressed to the Minister; or

(d) is removed from office by the Governor under subsection (6).

(8) On the office of a member of the Advisory Committee becoming vacant, a person must be appointed, in accordance with this Act, to the vacant office.

(9) One member of the Committee must be appointed by the Governor to preside at meetings of the Committee (who will be referred to in this Act as the ***presiding member*** of the Committee).

(10) An appointment under subsection (9) must be made from among the members appointed under subsection (2)(a).

172—Functions of Advisory Committee

(1) The functions of the Advisory Committee are—

(a) to investigate or advise the Minister (on its own initiative or at the request of the Minister) about any matter relating to early intervention, recovery, return to work or compensation with respect to injured workers; and

(b) to advise the Minister (on its own initiative or at the request of the Minister) on—

(i) proposals to make amendments to this Act, or to make regulations under this Act; or

(ii) other legislative proposals that may affect the operation of this Act; and

(c) to carry out other functions assigned to the Advisory Committee by the Minister or under another provision of this Act.

(2) The Advisory Committee may conduct public meetings and discussions and may, with the approval of the Minister, conduct inquiries, on questions arising before the Advisory Committee.

(3) The Advisory Committee may on its own initiative, and must at the direction of the Minister, consult and cooperate with the Corporation, other government authorities at a State or national level, representatives of industrial associations and other persons or bodies.

(4) The Advisory Committee may, with the approval of the Minister, establish subcommittees to assist the Committee.

(5) A subcommittee may, but need not, consist of, or include, members of the Advisory Committee.

173—Proceedings etc of Advisory Committee

(1) The Advisory Committee may meet on such occasions as it thinks fit and must meet at the request or in accordance with any direction of the Minister.

(2) Six members of the Advisory Committee constitute a quorum of the Committee.

(3) The presiding member of the Advisory Committee will, if present at a meeting of the Committee, preside at the meeting and, in the absence of the presiding member, a member chosen by the members present will preside.

(4) A decision carried by a majority of the votes of the members present at a meeting of the Advisory Committee is a decision of the Committee.

(5) Each member present at a meeting of the Advisory Committee is entitled to 1 vote on a matter arising for decision by the Committee and, if the votes are equal, the person presiding at the meeting has a second or casting vote.

(6) The Advisory Committee must ensure that accurate minutes are kept of its proceedings.

(7) The Advisory Committee may open its proceedings to the public unless the proceedings relate to commercially sensitive matters or to matters of a private confidential nature.

(8) Subject to this Act, the proceedings of the Advisory Committee will be conducted as the Committee determines.

174—Related provisions

(1) A member of the Advisory Committee who, as a member of the Committee, acquires information that—

(a) the member knows to be of a commercially sensitive nature, or of a private confidential nature; or

(b) the Committee classifies as confidential information,

must not divulge the information without the approval of the Committee.

Maximum penalty: $5 000.

(2) A member of the Advisory Committee will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with employers generally or employees generally, or a substantial section of employers or employees.

Part 12—Miscellaneous

175—Extension of the application of Act to self-employed persons

(1) The Corporation may, on the application of a person who is self-employed, extend to that person the protection of this Act (or of specified parts of this Act).

(2) An application under subsection (1) may be granted by the Corporation subject to such conditions and limitations as the Corporation thinks fit and any such condition or limitation will, to the extent of any inconsistency, prevail over the provisions of this Act.

176—Agreements with LSS Authority

(1) A prescribed authority may, in accordance with section 55 of the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*, enter into an agreement with the LSS Authority for the provision of services to persons—

(a) who have suffered work injuries; and

(b) who, in the opinion of the prescribed authority, would benefit from participating in certain aspects of the Scheme under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* relating to treatment, care and support needs and in having other services (whether under that Act or this Act) provided by the LSS Authority.

(2) If a person is subject to an agreement under this section—

(a) the person is required to comply with the provisions of the agreement insofar as it provides for the provision of services by the LSS Authority; and

(b) the prescribed authority is not required to provide services or compensation under this Act to the extent that they are provided by the LSS Authority under this section (and under section 55 of the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*); and

(c) the prescribed authority may, if the agreement so provides and to the extent provided by the agreement, delegate to the LSS Authority any power or discretion that is exercisable in relation to the person under any section of this Act prescribed by the regulations for the purposes of this paragraph (including, in the case of a self-insured employer, a power or discretion delegated to the self-insurer employer under Part 9 Division 2 of this Act); and

(d) the prescribed authority must make any payment contemplated by section 55(2)(c) of the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* (or under subsection (3)(c)).

(3) If a power or discretion is delegated under subsection (2)(c)—

(a) the prescribed authority may direct the LSS Authority how the LSS Authority is to exercise the power or discretion; and

(b) a decision of the LSS Authority made pursuant to a power or discretion will have effect as a decision of the prescribed authority and will be subject to review and appeal as a decision of the prescribed authority; and

(c) the agreement between the prescribed authority and the LSS Authority may provide for—

(i) a payment or payments to the LSS Authority to ensure that the LSS Authority is appropriately funded to provide any relevant services or compensation under the delegation; and

(ii) other payments in connection with the operation of the agreement,

(with any such payments to be paid into the Fund under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*).

(4) In this section—

LSS Authority means the Lifetime Support Authority of South Australia;

prescribed authority means—

(a) in relation to a person who suffered a work injury as a worker of a self-insured employer—that self-insured employer; and

(b) in any other case—the Corporation.

177—Payment not to constitute an admission of liability

A payment by the Corporation or an employer to a worker does not constitute an admission of liability or estop a subsequent denial of liability.

178—Employer may request progress report

(1) The employer of a worker may at any time request the Corporation to provide a report on—

(a) the medical progress being made by the worker;

(b) the worker's capacity for work as assessed under this Act.

(2) The Corporation must prepare a report requested under subsection (1) within a reasonable time of the request being made and must send copies of the report to the employer and the worker.

179—Copies of medical reports

(1) The Corporation must, within 7 days after receiving a request from a worker's employer (or a representative of such an employer), provide the employer (or the representative) with copies of reports in the Corporation's possession prepared by health practitioners and relevant to the worker's medical condition, the worker's progress in recovery, or the extent of the worker's capacity for work.

(2) An employer must not disclose confidential information about a worker in a report obtained under this section except as may be necessary—

(a) to assist the worker's recovery or return to work; or

(b) for the purposes of proceedings under this Act.

180—Worker's right of access to claims file

(1) Subject to this section, the Corporation or a delegate of the Corporation must, at the request of a worker—

(a) provide the worker, within 45 days after the date of the request, with copies of all documentary material in the possession of the Corporation or the delegate relevant to a claim made by the worker; and

(b) make available for inspection by the worker (or a representative of the worker) all non-documentary material in the possession of the Corporation or the delegate relevant to a claim made by the worker.

(2) Non-documentary material is to be made available for inspection—

(a) at a reasonable time and place agreed between the Corporation or delegate and the worker; or

(b) in the absence of agreement—at a public office of the Corporation or delegate nominated by the worker at a time (which must be at least 45 days, but not more than 60 days, after the request is made and during ordinary business hours) nominated by the worker.

(3) However, the Corporation or delegate is not obliged to provide copies of material, or to make material available for inspection by the worker if—

(a) the material is relevant to the investigation of suspected dishonesty in relation to the claim; or

(b) the material is protected by legal professional privilege; or

(c) the disclosure of the material could reasonably be expected to endanger the life or physical safety of any person.

(4) A worker who is aggrieved by a decision under subsection (3) is entitled to a review of the decision by the Corporation or the delegate (as the case may be).

(5) An application for review under subsection (4)—

(a) must be made in accordance with the regulations; and

(b) must be made within 30 days after the day on which notice of the decision was given to the worker or within such longer period as the Corporation or delegate may allow.

(6) On an application for review, the Corporation or delegate may confirm, vary or reverse the decision under review.

(7) If the Corporation or delegate fails to make a decision on a review under subsection (6) within 14 days after the application for review is received under subsection (5), the Corporation or delegate will be taken to have confirmed the decision under review.

(8) A worker who is aggrieved by a decision under subsection (6) may apply to the Ombudsman for a review of the decision.

(9) An application for a review under subsection (8)—

(a) must be made in a manner and form determined by the Ombudsman; and

(b) must be made within 30 days after the day on which notice of the decision was given to the worker or within such longer period as the Ombudsman may allow.

(10) The Ombudsman may, in relation to a review under subsection (8)—

(a) exercise the powers of the Ombudsman under the *Ombudsman Act 1972* as if carrying out an investigation under that Act, subject to such modifications as may be necessary, or as may be prescribed; and

(b) at the conclusion of the review confirm, vary or reverse the decision under review.

(11) For the purposes of a review of a decision of a self-insured employer under subsection (8), the self-insured employer will be taken to be an agency to which the *Ombudsman Act 1972* applies.

(12) Section 17(1) of the *Ombudsman Act 1972* does not apply in relation to a review under subsection (8).

(13) It will be taken to be a condition of registration as a self-insured employer that the employer will comply with any decision of the Ombudsman that relates to the employer under subsection (10).

(14) If the Ombudsman becomes aware that a self-insured employer has failed to comply with a decision of the Ombudsman that relates to the employer under subsection (10), the Ombudsman must advise the Corporation of the failure.

(15) If the Corporation or a delegate of the Corporation mistakenly provides material to a worker to which the worker is not entitled, the worker must return the material within a reasonable time after requested to do so by the Corporation or the delegate.

Maximum penalty: $2 500.

(16) In this section, a ***delegate*** of the Corporation includes a self-insured employer.

181—Medical examination at request of employer

(1) Subject to subsection (2), the employer of a worker who has made a claim under this Act may require the Corporation to have the worker submit to an examination by a recognised health practitioner nominated by the Corporation.

(2) A worker must not be required to submit to examinations under this section more frequently than is permitted by the regulations.

(3) The Corporation may, if it thinks fit, charge the cost of an examination under this section to the employer.

(4) If it appears that there has been undue delay in having a worker examined under this section, the Tribunal may, on application by the employer, give such directions to the Corporation as appear reasonable in the circumstances to expedite the examination.

(5) The Corporation must comply, or take steps to secure compliance, with such a direction.

182—Worker to be supplied with copy of medical report

Where a report is obtained for the purposes of this Act by the Corporation or an employer on the findings made, or the opinions formed, by a health practitioner on the examination of a worker, the Corporation or the employer must, within 7 days after receiving the report, send a copy of the report to the worker.

183—Powers of entry and inspection

(1) For the purposes of this Act, an authorised officer may, at any reasonable time—

(a) enter any workplace;

(b) inspect the workplace, anything at the workplace and work there in progress;

(c) require a person who has custody or control of books, documents or records relevant to any matter arising under this Act to produce those books, documents or records;

(d) examine, copy and take extracts from any such books, documents or records, or require an employer to provide a copy of any such books, documents or records;

(e) take photographs, films or video or audio recordings;

(f) take measurements, make notes and records and carry out tests;

(g) require (directly or through an interpreter) any person to answer, to the best of that person's knowledge, information and belief, any question relevant to any matter arising under this Act;

(h) require an employer to produce any document, or a copy of any document, that is required to be prepared or kept under this Act;

(i) seize any document that has been mistakenly provided by the Corporation under this Act.

(2) If—

(a) a person whose native language is not English is suspected of having breached this Act; and

(b) the person is interviewed by an authorised officer in relation to that suspected breach; and

(c) the person is not reasonably fluent in English,

the person is entitled to be assisted by an interpreter during the interview.

(3) A person is not required—

(a) to provide information under this section that is privileged on the ground of legal professional privilege; or

(b) to answer a question under this section if the answer would tend to incriminate that person of an offence.

(4) An authorised officer, who suspects on reasonable grounds that an offence against this Act has been committed, may seize and retain anything that affords evidence of that offence.

(5) An authorised officer must, at the request of any person from whose possession evidentiary material is seized under subsection (4), provide a receipt for that material.

(6) Where anything has been seized under subsection (4) the following provisions apply:

(a) the thing seized must be held pending proceedings for an offence against this Act related to the thing seized, unless the Minister, on application, authorises its release to the person from whom it was seized, or any person who had legal title to it at the time of its seizure, subject to such conditions as the Minister thinks fit (including conditions as to the giving of security for satisfaction of an order under paragraph (b)(ii));

(b) where proceedings for an offence against this Act relating to the thing seized are instituted within 6 months of its seizure and the person charged is found guilty of the offence, the court may—

(i) order that it be forfeited to the Crown; or

(ii) where it has been released pursuant to paragraph (a)—order that it be forfeited to the Crown or that the person to whom it was released pay to the Minister an amount equal to its market value at the time of its seizure, as the court thinks fit;

(c) where—

(i) proceedings are not instituted for an offence against this Act relating to the thing seized within 6 months after its seizure; or

(ii) proceedings having been so instituted—

(A) the person charged is found not guilty of the offence; or

(B) the person charged is found guilty of the offence but no order for forfeiture is made under paragraph (b),

the person from whom the thing was seized, or any person with legal title to it, is entitled to recover from the Minister, by action in a court of competent jurisdiction, the thing itself, or if it has deteriorated or been destroyed, compensation of an amount equal to its market value at the time of its seizure.

(7) In the exercise of powers under this section, an authorised officer may be accompanied by such assistants as may be necessary or desirable in the circumstances.

(8) An employer whose workplace is subject to an inspection under this section must provide such assistance as may be necessary to facilitate the exercise of the powers conferred by this section.

(9) A person must not—

(a) hinder or obstruct an authorised officer in the exercise of a power conferred by this section; or

(b) refuse or fail, without lawful excuse, to comply with a requirement under this section.

Maximum penalty: $10 000.

(10) An authorised officer, or a person assisting an authorised officer, who in the course of exercising powers under this section in relation to an employer—

(a) unreasonably hinders or obstructs the employer in the day to day running of his or her business;

(b) addresses offensive language to the employer or to any other person at the workplace;

(c) assaults the employer or any other person at the workplace,

is guilty of an offence.

Maximum penalty:

(a) for an offence against paragraph (a) or (b)—$5 000;

(b) for an offence against paragraph (c)—$5 000 or imprisonment for 1 year.

184—Inspection of place of employment by recovery or return to work adviser

(1) Subject to subsection (2), a designated adviser may inspect the place of employment of an injured worker.

(2) A power of inspection under subsection (1) must be exercised so as to avoid any unnecessary disruption of, or interference with, the performance of work at a place of employment.

(3) A person must not hinder an inspection under this section.

Maximum penalty: $5 000.

(4) A reference in this section to a designated adviser is a reference to a person who has been authorised by the Corporation to act under this section in connection with the provision of recovery/return to work services to a worker or workers for the purposes of this Act.

185—Confidentiality to be maintained

(1) A person must not disclose information (except as permitted by subsection (3)) if—

(a) the person obtained the information in the course of carrying out functions in, or in relation to, the administration, operation or enforcement of this Act; and

(b) the information is—

(i) about commercial or trading operations; or

(ii) about the physical or mental condition, or the personal circumstances or affairs, of a worker or other person; or

(iii) information provided in a return or in response to a request for information under this Act.

Maximum penalty: $10 000.

(2) The Corporation may enter into arrangements with corresponding workers compensation authorities about sharing information obtained in the course of carrying out functions related to the administration, operation or enforcement of this Act or a corresponding law.

(3) A disclosure of information is permitted if it is—

(a) a disclosure in the course of official duties; or

(b) a disclosure of statistical information; or

(c) a disclosure made with the consent of the person to whom the information relates, or who furnished the information; or

(d) a disclosure made to a corresponding workers compensation authority in accordance with an arrangement entered into under subsection (2); or

(e) a disclosure authorised or required under any other Act or law; or

(f) a disclosure required by a court or tribunal constituted by law, or before a review authority; or

(g) a disclosure to the Corporation or a self-insured employer; or

(h) a disclosure to an injured worker's employer in accordance with this Act; or

(i) a disclosure to the Lifetime Support Authority of South Australia (the ***LSS Authority***)—

(i) for purposes associated with the operation of section 176 of this Act, section 55 of the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*, or an agreement envisaged by those sections; or

(ii) without limiting subparagraph (i), so that the LSS Authority may provide services and exercise powers and discretions under this Act or the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*; or

(j) a disclosure made under the authorisation of the Minister; or

(k) a disclosure authorised by regulation.

(4) A regulation made for the purposes of subsection (3)(k) cannot take effect unless it has been laid before both Houses of Parliament and—

(a) no motion for disallowance is moved within the time for such a motion; or

(b) every motion for disallowance of the regulation has been defeated or withdrawn, or has lapsed.

(5) In this section—

corresponding workers compensation authority means any person or authority in another State or a Territory of the Commonwealth with power to determine or manage claims for compensation for injuries arising from employment.

186—Confidentiality—employers

(1) An employer who is registered under this Act, or a person employed by an employer who is registered under this Act, must not disclose information about the physical or mental condition of a worker unless the disclosure is—

(a) reasonably required for, or in connection with, the carrying out of the proper conduct of the business of the employer; or

(b) required in connection with the operation of this Act; or

(c) made with the consent of the person to whom the information relates, or who furnished the information; or

(d) required by a court or tribunal constituted by law, or before a review authority; or

(e) authorised or required under any other Act or law; or

(f) made—

(i) to the Corporation; or

(ii) to the worker's employer; or

(g) made to the Lifetime Support Authority of South Australia (the ***LSS Authority***)—

(i) for purposes associated with the operation of section 176 of this Act, section 55 of the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*, or an agreement envisaged by those sections; or

(ii) without limiting subparagraph (i), so that the LSS Authority may provide services and exercise powers and discretions under this Act or the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*; or

(h) made under the authorisation of the Minister; or

(i) authorised by regulation.

Maximum penalty: $10 000.

(2) A regulation made for the purposes of subsection (1)(i) cannot take effect unless it has been laid before both Houses of Parliament and—

(a) no motion for disallowance is moved within the time for such a motion; or

(b) every motion for disallowance of the regulation has been defeated or withdrawn, or has lapsed.

187—Employer information

The Corporation may, as it thinks fit, disclose the following information in relation to any employer registered (or previously registered) under this Act:

(a) the number of claims (whether under this Act or at common law) in respect of work injuries made by the employer's workers in a particular period;

(b) the cost of claims (whether under this Act or at common law) in respect of work injuries suffered by the employer's workers in a particular period;

(c) the nature of work injuries suffered by the employer's workers;

(d) details of any remission of premiums granted to the employer, or any supplementary payment imposed on the employer, under Part 9 Division 6.

188—Injuries that develop gradually

(1) An injury (not being noise induced hearing loss) that develops gradually or is a disease will be taken to have occurred when the worker first becomes totally or partially incapacitated for work by the injury.

(2) Subject to this section, where a claim is made under this Act in respect of noise induced hearing loss by a worker (not being a person who has retired from employment on account of age or ill-health), the whole of the loss will be taken to have occurred immediately before notice of the injury was given and, subject to any proof to the contrary, to have arisen out of employment in which the worker was last exposed to noise capable of causing noise induced hearing loss.

(3) If a claim is made under this Act in respect of noise induced hearing loss by a person who has retired from employment on account of age or ill-health, the whole of the loss will be taken to have occurred immediately before the person retired and, subject to any proof to the contrary, to have arisen out of employment in which the person was last exposed to noise capable of causing noise induced hearing loss.

(4) If—

(a) a self-insured employer establishes in accordance with procedures laid down by the regulations that a worker was, at the time of undertaking employment with the employer, suffering from a particular injury; and

(b) the injury is of a prescribed class; and

(c) an aggravation, acceleration, exacerbation, deterioration or recurrence of the injury arises from employment by the employer referred to in paragraph (a); and

(d) the employer pays compensation under this Act in respect of the injury,

the employer may, by action in the Industrial Relations Court of South Australia, recover a fair contribution, determined by the Court, towards the amount of the compensation—

(e) from any self-insured employer from whose employment the injury established under paragraph (a) arose; or

(f) if there is no such self-insured employer—from the Corporation.

(5) If—

(a) an employer (not being a self-insured employer) establishes in accordance with procedures laid down by the regulations that a worker was, at the time of undertaking employment with the employer, suffering from a particular injury; and

(b) the injury is of a prescribed class; and

(c) an aggravation, acceleration, exacerbation, deterioration or recurrence of the injury arises from employment by the employer referred to in paragraph (a); and

(d) the Corporation pays compensation under this Act in respect of the injury,

the Corporation may, by action in the Industrial Relations Court of South Australia, recover a fair contribution, determined by the Court, towards the amount of the compensation from any self-insured employer from whose employment the injury established under paragraph (a) arose.

189—Certain payments not to affect benefits under this Act

Compensation provided to a person under this Act must not be reduced or otherwise affected by—

(a) an *ex gratia* payment; or

(b) an accident insurance payment; or

(c) a payment or benefit of a class prescribed by regulation for the purposes of this section.

190—No contribution from workers

(1) An employer must not deduct from the wages of a worker any part of any sum that the employer is or may become liable to pay under this Act.

(2) An employer must not discriminate against a worker on the ground that the employer is liable to pay any sum under this Act to or in relation to the worker.

(3) An employer must not require or permit a worker to contribute in any manner towards indemnifying the employer against any liability which the employer may incur under this Act.

(4) A person who contravenes this section—

(a) is guilty of an offence and liable to a penalty not exceeding $10 000; and

(b) is liable to compensate a worker for any monetary loss suffered by virtue of that contravention.

191—No contracting out

(1) This Act applies despite any contract to the contrary.

(2) Subsection (1) does not apply to or in relation to—

(a) a contract entered into with the consent of the Corporation; or

(b) any circumstances prescribed by the regulations.

192—Non-assignability of benefits

(1) Compensation under this Act—

(a) is not capable of being assigned, charged or attached; and

(b) does not pass to any other person by operation of law,

nor can any claim be set off against that compensation (except as may be otherwise provided under this Act).

(2) Subsection (1) has no effect to the extent to which (but for this subsection) it would operate to prevent—

(a) the satisfaction of an obligation by the worker to maintain another person pursuant to an order of a court of competent jurisdiction; or

(b) the passing of accrued rights of a deceased worker to a legal personal representative.

193—Payments if worker in prison

(1) If a person who is in receipt of weekly payments under this Act is convicted of an offence and committed to prison, then during the period of imprisonment the weekly payments will be suspended by force of this section unless the Corporation determines that they should be paid to the dependants of the prisoner (and any determination of the Corporation is not reviewable).

(2) If the Corporation determines that weekly payments should be paid to the dependants of a prisoner, they will be so paid in such proportions as the Corporation may determine.

194—Service of documents

(1) A notice or other document required or authorised by this Act to be served or given to any person may be served—

(a) personally; or

(b) by leaving the notice or document at an address for service; or

(c) by sending the notice or document or a sealed copy of the notice or document by post addressed to the person at an address for service; or

(d) by sending the notice or document in the form of an electronic document or communication to the person at an electronic address for service; or

(e) by such other method as is permitted by regulations under this Act or by any Act.

(2) In any case to which subsection (1)(c) applies, unless the contrary is proved, service of a notice or document will be taken to have been effected 2 business days after the date of posting.

(3) In subsection (1)—

address for service, in relation to a person, means—

(a) the person's last known place of residence or business; or

(b) an address for service as shown on a claim or a return made or furnished by the person, or on the person's behalf, under this Act (not being an address superseded by a subsequent address for service shown on a later claim or return);

electronic address for service, in relation to a person, means—

(a) the person's last known email address; or

(b) another facility for the receipt of electronic documents that forms part of an electronic messaging system permitted by the regulations.

195—Service of documents on Corporation

Any claim, notice, return or form to be served on the Corporation for the purposes of this Act may be served by lodgment at an office of the Corporation with a person authorised by the Corporation to accept service of documents on its behalf.

196—Dishonesty

(1) A person who—

(a) obtains by dishonest means a payment or other benefit under this Act; or

(b) dishonestly claims to be entitled to a payment or other benefit under this Act; or

(c) dishonestly makes a statement about a claim under this Act knowing the statement is false or misleading; or

(d) dishonestly makes an application, or gives a return, under this Act knowing the application or return to be false or misleading,

is guilty of an offence.

Maximum penalty: $50 000 or imprisonment for 2 years.

(2) A person who—

(a) aids, abets, counsels or procures the commission of an offence against subsection (1); or

(b) solicits or incites the commission of any such offence,

is guilty of an offence.

Maximum penalty: $10 000 or imprisonment for 1 year.

(3) If a court convicts a person of an offence against this section, or finds a person guilty of such an offence without recording a conviction, the court must, on application by the Corporation or a self-insured employer, order the person who committed the offence—

(a) to make good any loss to the applicant resulting from the commission of the offence; and

(b) to reimburse costs incurred by the applicant in investigating and prosecuting the offence.

197—Evidence

(1) In any legal proceedings, a certificate apparently signed by an officer of the Corporation, certifying—

(a) that a person was, on a day specified in the certificate, an employer;

(b) that a person was, on a day specified in the certificate, a worker,

will, in the absence of proof to the contrary, be proof of the matters stated in the certificate.

(2) In any legal proceedings against a person for failing to register with the Corporation as an employer, a certificate apparently signed by an officer of the Corporation, certifying that the person was not, on a specified day, registered as an employer will, in the absence of proof to the contrary, be proof of the matters stated in the certificate.

(3) In any legal proceedings, a certificate apparently signed by an officer of the Corporation, certifying that an amount specified in the certificate is payable to the Corporation, by way of premium, fee, supplementary payment or fine, by a person named in the certificate, will, in the absence of proof to the contrary, be proof of the liability.

(4) In any proceedings against a person for failing to furnish a return under this Act, a certificate apparently signed by an officer of the Corporation certifying that the return was not received before the expiration of the period within which it was required to be furnished will, in the absence of evidence to the contrary, be proof that the defendant failed duly to furnish the return.

(5) In any proceedings, a certificate apparently under the seal of the Corporation certifying that an officer of the Corporation named in the certificate was, on a day specified in the certificate, invested with specified delegated powers or functions will, in the absence of evidence to the contrary, be proof of the matters stated in the certificate.

(6) In this section—

officer of the Corporation includes a person who, although not an officer of the Corporation, is acting under a delegation of the Corporation.

198—Offences

(1) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence.

(2) A person who is guilty of an offence against this Act for which no penalty is specifically provided is liable to a fine not exceeding $5 000.

(3) Proceedings for an offence against this Act will be disposed of summarily.

(4) A prosecution for an offence against this Act must be commenced within 3 years after the date on which the offence is alleged to have been committed.

(5) Subsection (1) does not render the Corporation, a member of the staff of the Corporation, or any person acting on behalf of the Corporation, liable to prosecution for any act or omission related to the administration or enforcement of this Act.

199—Expiation fees

Expiation fees may be fixed, by regulation, for alleged offences against this Act.

200—Right of intervention

The Corporation has a right to intervene and be heard in—

(a) any proceedings under this Act before the Tribunal; or

(b) any proceedings before a court—

(i) in which the interpretation or application of this Act or the repealed Act is in issue; or

(ii) in which the Corporation's interests may be directly or indirectly affected.

201—Recovery of payments

(1) In addition to the other provisions of this Act, the Corporation may recover (as a debt) from a worker, an employer or any other person any payment of compensation or other amount to which the worker, employer or other person is not entitled under this Act.

(2) Subsection (1) extends to a situation where the Corporation is correcting an error, mistake or oversight, or revising an assessment, previously made by the Corporation under this Act.

(3) If the Corporation recovers or receives from a worker or other person an amount on account of compensation paid by the worker's employer, the Corporation may reimburse the amount to the employer.

(4) This section does not limit any other right of a recovery under another section of this Act.

202—Regulations

(1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

(a) require the keeping of records, statistics or other information; and

(b) require the provision of reports, statements, documents or other forms of information to the Corporation; and

(c) require the giving of notice to the Corporation at specified intervals, or on the occurrence of any specified event; and

(d) specify any procedure associated with any process under this Act; and

(e) make provisions with respect to the operation of this Act in relation to self-insured employers; and

(f) provide for the waiver of any fee prescribed by the regulations; and

(g) impose penalties, not exceeding $20 000, for a contravention of, or failure to comply with, a regulation; and

(h) provide that an amount prescribed by the regulations may be adjusted on an annual basis according to changes in the Consumer Price Index (with amounts being able to be rounded up under a scheme prescribed by the regulations).

(3) A regulation may—

(a) refer to or incorporate, wholly or partially and with or without modification, a document prepared or published by a specified body, either as in force at the time the regulation is made or as in force from time to time; and

(b) be of general or limited application; and

(c) make different provision according to the persons or circumstances to which it is expressed to apply; and

(d) provide that a matter is to be determined according to the discretion of the Minister or the Corporation.

203—Review of Act

(1) The Minister must cause a review of this Act and its administration and operation to be conducted on the expiry of 3 years from its commencement.

(2) The review must include an assessment of—

(a) the extent to which the scheme established by this Act and the dispute resolution processes under this Act and the *South Australian Employment Tribunal Act 2014* have achieved a reduction in the number of disputed matters and a decrease in the time taken to resolve disputes (especially when compared to the scheme and processes applying under the repealed Act); and

(b) without limiting paragraph (a), whether the jurisdiction of the South Australian Employment Tribunal under this Act should be transferred to the South Australian Civil and Administrative Tribunal; and

(c) the extent to which there has been an improvement in the determination or resolution of medical questions arising under this Act (especially when compared to the system applying under the repealed Act),

and may include any other matter that the Minister considers to be relevant to a review of this Act.

(3) The review must be completed within 6 months and the results of the review embodied in a written report.

(4) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after receiving the report.

Schedule 1—Presumptive employment

1—Presumptive employment

(1) The Crown is the presumptive employer of persons of a prescribed class who voluntarily perform work of a prescribed class that is of benefit to the State (and the Crown therefore has the liabilities of a self-insured employer in relation to persons of that class).

(2) Where a person of a class prescribed under subclause (1) suffers a work injury while performing the work to which the prescription relates—

(a) the question of whether and, if so, to what extent the person is incapacitated for work must be determined according to the employment (including self-employment) in which the person was otherwise engaged at the commencement of the incapacity or, if the person was not then engaged in other employment, by reference to employment for which he or she was then reasonably fitted; and

(b) subject to paragraph (c), the average weekly earnings of the person must be determined—

(i) if the person was self-employed, by reference to the remuneration that the person would have received if he or she had been doing the same work in employment; or

(ii) if the person was not employed, by reference to the remuneration that the person would have received if he or she had been working in employment for which he or she was reasonably fitted,

and if there is an award or industrial agreement applicable to that class of employment, by reference to that award or agreement; and

(c) where—

(i) the person dies; and

(ii) a claim for compensation is made by a person claiming to be a dependant of the deceased; and

(iii) the deceased and the claimant were both members of a partnership or proprietary company and the predominant work of the deceased before the date of death was in the business of that partnership or company,

then for the purposes of determining whether the claimant was a dependant of the deceased and, if so, the extent of the dependency, any income derived by the claimant from the partnership or company during the deceased's lifetime will (to the extent that the income is attributable to the deceased's work on behalf of the partnership or company) be taken to be an allowance made by the deceased, out of the deceased's own income, for the maintenance of the claimant.

(3) For the purposes of this clause—

(a) each of the following is a prescribed class of persons:

(i) members of SACFS who voluntarily perform work in connection with that membership;

(ii) other persons of a class prescribed by the regulations; and

(b) work of a prescribed class is constituted by—

(i) in relation to a member of SACFS under paragraph (a)(i)—

(A) any activity directed towards preventing, controlling or extinguishing a fire, or dealing with any other emergency that requires SACFS to act to protect life, property or the environment; or

(B) attending in response to a call for assistance by SACFS; or

(C) attending a SACFS meeting, competition, training exercise or other organised activity; or

(D) any other activity carried out in relation to the functions of SACFS under the *Fire and Emergency Services Act 2005*; and

(ii) other work of a class prescribed by the regulations.

Schedule 2—Injuries presumed to arise from general employment

Description of injury	Description of work
Ankylostomiasis	Mining.
Anthrax	Any work— (a) in connection with animals infected with anthrax; (b) involving handling of animal carcasses or parts of such carcasses; (c) involving handling of wool, hair, bristles, hides or skins; (d) involving loading or unloading, or transport, of animals, animal carcasses or parts of such carcasses, wool, hair, bristles, hides or skins.
Antimony poisoning or its *sequelae*	Any work involving the use of antimony or its preparations or compounds.
Arsenic poisoning or its *sequelae*	Any work involving the use of arsenic or its preparations or compounds.
Asbestosis	Any work involving exposure to inhalation of asbestos fibres.
Asthma or asthmatic attacks	Any work involving contact with, or the inhalation of, the dust of red pine, western red cedar or blackwood. Any work involving contact with, or the inhalation of, flour or flour dust.
Benzene poisoning (ie poisoning by benzene or its homologues or their nitro- and amido-derivatives) and its *sequelae*	Any work involving the production, liberation or utilisation of benzene or its homologues or their nitro- and amido-derivatives.
Brucellosis, leptospirosis, or Q fever	Any work at, in, about, or in connection with, a meat works or involving the handling of meat, hides, skins or carcasses.
Carbon monoxide poisoning or its *sequelae*	Any work involving contact with, or the inhalation of, carbon monoxide gas.
Chrome ulceration or its *sequelae*	Any work involving the use of chromic acid or bi-chromate or ammonium potassium or sodium or their preparations.
Copper poisoning or its *sequelae*	Any work involving the use or handling of copper or its preparations or compounds.
Dermatitis	Any work involving exposure to, or contact with, the dust of blackwood.
Halogen poisoning (ie poisoning by the halogen derivatives of hydrocarbons of the aliphatic series) and its *sequelae*	Any work involving the production, liberation or utilisation of halogen derivatives or hydrocarbons of the aliphatic series.
Lead poisoning or its *sequelae*	Any work involving the use of lead or its preparations or compounds.

Description of injury	Description of work
Mercury poisoning or its *sequelae*	Any work involving the use of mercury or its preparations or compounds.
Mesothelioma	Any work involving exposure to inhalation of asbestos fibres.
Nitrous fumes poisoning and its *sequelae*	Any work involving contact with nitric acid or the inhalation of nitrous fumes.
Noise induced hearing loss	Any work involving exposure to noise.
Pathological manifestations due to— (a) radium and other radioactive substances; (b) X-rays	Any work involving exposure to the action of radium, radioactive substances or X-rays.
Phosphorus, poisoning or its *sequelae*	Any work involving the use of phosphorus or its preparations or compounds.
Pneumoconiosis, including silicosis	Any work involving mining, quarrying, cutting, crushing, grinding or pushing stone or melting, grinding or polishing metal.
Primary epitheliomatous cancer of the skin	Any work involving processes which involve the handling or use of tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of those substances.
Septic poisoning or its *sequelae*	Any work involving the handling of meat or the manufacture of meat products or animal by-products in connection with the trade of butcher or slaughterman.
Zinc poisoning or its *sequelae*	Any work involving the use of zinc or its preparations or compounds.

Schedule 3—Injuries presumed to arise from employment as a firefighter

1—Substantive provisions

(1) If—

(a) a worker suffers an injury of a kind referred to in the first column of the table in this Schedule; and

(b) the injury occurred on or after 1 July 2013; and

(c) before the injury occurred, the worker was employed by SAMFS as a firefighter for the qualifying period referred to in the second column of the table opposite the injury; and

(d) during that period, the worker was exposed to the hazards of a fire scene (including exposure to a hazard of the fire that occurred away from the scene),

the worker's injury is presumed, in the absence of proof to the contrary, to have arisen from employment by SAMFS.

(2) If—

(a) a worker suffers an injury of a kind referred to in the first column of the table in this Schedule; and

(b) the worker was a member of SACFS presumptively employed by the Crown as a firefighter—

(i) on or after 1 July 2013; and

(ii) before the injury occurred; and

(iii) for the qualifying period referred to in the second column of the table opposite the injury; and

(c) the injury occurred—

(i) on or after 1 July 2013; and

(ii) in the case of a worker who is no longer a member of SACFS presumptively employed by the Crown as a firefighter—no more than 10 years after the cessation of that presumptive employment; and

(d) during the qualifying period referred to in paragraph (b)(iii), the worker was exposed to the hazards of a fire scene (including exposure to a hazard of the fire that occurred away from the scene),

the worker's injury is presumed, in the absence of proof to the contrary, to have arisen from his or her presumptive employment by the Crown.

(3) For the purposes of subclauses (1) and (2)—

(a) a worker is taken to have been employed as a firefighter if firefighting duties made up a substantial portion of his or her duties; and

(b) a worker who was so employed for 2 or more periods that add up to or exceed the qualifying period is taken to have been employed for the qualifying period; and

(c) the qualifying period may include a period or periods that commenced or occurred before 1 July 2013.

Description of injury	**Qualifying period**
Primary site brain cancer	5 years
Primary site bladder cancer	15 years
Primary site kidney cancer	15 years
Primary non-Hodgkins lymphoma	15 years
Primary leukemia	5 years
Primary site breast cancer	10 years
Primary site testicular cancer	10 years
Multiple myeloma	15 years
Primary site prostate cancer	15 years
Primary site ureter cancer	15 years

Description of injury	Qualifying period
Primary site colorectal cancer	15 years
Primary site oesophageal cancer	25 years

Schedule 4—Adjacent areas

1—Interpretation

(1) In this Schedule—

continental shelf and ***territorial sea*** have the same meanings as those terms have in the Seas and Submerged Lands Act;

Petroleum Act means the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth;

Seas and Submerged Lands Act means the *Seas and Submerged Lands Act 1973* of the Commonwealth.

(2) If the Petroleum Act is repealed and re-enacted (with or without modifications), a reference in this Schedule to that Act, or to a provision or Schedule of that Act, will be taken to include a reference to the new Commonwealth Act, or to the corresponding provision or Schedule in the new Commonwealth Act, (as the case requires).

2—Adjacent areas

(1) The ***adjacent area*** for South Australia, New South Wales, Victoria or Tasmania is so much of the area described in Schedule 2 to the Petroleum Act in relation to that State as is within the outer limits of the continental shelf and includes the space above and below that area.

(2) The ***adjacent area*** for Queensland is—

(a) so much of the area described in Schedule 2 to the Petroleum Act in relation to Queensland as is within the outer limits of the continental shelf; and

(b) the Coral Sea area (within the meaning of subsection (7) of section 5A of the Petroleum Act) other than the territorial sea within the Coral Sea area; and

(c) the areas within the outer limits of the territorial sea adjacent to certain islands of Queensland as determined by proclamation on 4 February 1983 under section 7 of the Seas and Submerged Lands Act; and

(d) the space above and below the areas described in paragraphs (a), (b) and (c).

(3) The ***adjacent area*** for Western Australia is so much of the area described in Schedule 2 to the Petroleum Act in relation to Western Australia as—

(a) is within the outer limits of the continental shelf; and

(b) is not within Area A of the Zone of Cooperation,

and includes the space above and below that area.

(4) The ***adjacent area*** for the Northern Territory is—

(a) so much of the area described in Schedule 2 to the Petroleum Act in relation to the Northern Territory as—

(i) is within the outer limits of the continental shelf; and

(ii) is not within Area A of the Zone of Cooperation; and

(b) the adjacent area for the Territory of Ashmore and Cartier Islands (within the meaning of subsection (3) of section 5A of the Petroleum Act) other than the territorial sea within that area; and

(c) the space above and below the areas described in paragraphs (a) and (b).

(5) However, the adjacent area for a State does not include any area inside the limits of any State or Territory.

Schedule 5—Statement of service standards

Part 1—Introduction

1—Aim of these standards

(1) These standards are intended to meet the reasonable expectations of workers and employers about how the Corporation should deal with them by—

(a) setting out principles that will be observed by the Corporation when it is dealing with a worker or an employer; and

(b) providing a procedure for lodging and dealing with complaints about breaches of these standards; and

(c) providing consequences and remedies for breaches of these standards.

(2) These standards recognise that when a worker or an employer deals with the Corporation, it is reasonable for the worker and the employer to expect the highest standards of service and fairness.

2—Interpretation

Unless the contrary intention appears, a reference in these standards to the Corporation includes—

(a) a reference to a self-insured employer; and

(b) a reference to a claims agent or to a provider of services engaged by the Corporation or a self-insured employer.

3—Spirit of these standards

These standards encourage positive relationships between the Corporation, workers and employers and acknowledge that the Corporation, workers and employers need to work together in order to achieve the best outcomes for all, especially by adopting early intervention and return to work processes when a worker is injured at work.

Part 2—The standards

4—The standards

The Corporation will—

(a) view a worker's recovery and return to work as the primary goal if a worker is injured while at work;

(b) ensure that early and timely intervention occurs to improve recovery and return to work outcomes including after retraining (if required);

(c) with the active assistance and participation of the worker and the employer, consistent with their obligations under this Act, ensure that recovery and return to work processes focus on maintaining the relationship between the worker and the employer;

(d) ensure that a worker's employer is made aware of, and fulfils, the employer's recovery and return to work obligations because early and effective workplace-based coordination of a timely and safe return to work benefits an injured worker's recovery;

(e) treat a worker and an employer fairly and with integrity, respect and courtesy, and comply with stated timeframes;

(f) be clear about how the Corporation can assist a worker and an employer to resolve any issues by providing accurate and complete information that is consistent and easy to understand (including options about any claim, entitlements, obligations and responsibilities);

(g) assist a worker in making a claim and, if necessary, provide a worker with information about where the worker can access advice, advocacy services and support;

(h) take all reasonable steps to provide services and information in a worker's or employer's preferred language and format, including through the use of interpreters if required, and to demonstrate respect and sensitivity to a person's cultural beliefs and values;

(i) respect and maintain confidentiality and privacy in accordance with any legislative requirements;

(j) provide avenues for feedback or for making complaints, and to be clear about what can be expected as a response;

(k) recognise a right of a worker or an employer to be supported by another person and to be represented by a union, advocate or lawyer.

Part 3—Complaints about breaches of these standards

5—Overview

(1) A worker or an employer who has a concern about whether the Corporation has complied with any of these standards may—

(a) raise the issue or concern directly with the Corporation so that it can be dealt with in an immediate way; or

(b) lodge a complaint with the Ombudsman (including in a case where the matter is a concern in relation to a self-insured employer or a provider of services engaged by a self-insured employer).

(2) In connection with the operation of subclause (1)—

(a) the preference is to attempt to resolve a matter directly with the Corporation; and

(b) if the matter is referred to the Ombudsman, the Corporation will comply with any recommendation of the Ombudsman in order to ensure compliance with these standards; and

(c) without limiting subclause (3), sections 17(1) and 25 of the *Ombudsman Act 1972* do not apply in relation to a matter referred to the Ombudsman.

(3) If a complaint is lodged with the Ombudsman under subclause (1) in relation to a self-insured employer or a provider of services engaged by a self-insured employer—

(a) the Ombudsman may, in investigating the complaint, exercise the powers of the Ombudsman under the *Ombudsman Act 1972* as if carrying out an investigation under that Act, subject to such modifications as may be necessary, or as may be prescribed; and

(b) the self-insured employer or provider will be taken for the purposes of the investigation to be an agency to which the *Ombudsman Act 1972* applies; and

(c) the Ombudsman must report to the Corporation on the outcome of the investigation.

6—Procedures for the Corporation to deal with a complaint

(1) The Corporation will work with a person who lodges a complaint to help him or her to address and resolve problems and concerns and to find a resolution to the matter in an effective way.

(2) As an important part of the steps to be taken under subclause (1), the Corporation will advise the person of—

(a) what steps have been taken in relation to the relevant problem or concern; and

(b) the procedure that can be followed to lodge a complaint with the State Ombudsman if the person is not satisfied with the resolution of the matter by the Corporation.

(3) The Corporation will provide a response to a complaint within 10 business days after the complaint is lodged with the Corporation.

(4) If a matter requires extended investigation, the person will, within 10 business days, receive an interim response and an indication of when a final response will be provided.

7—Remedies

If it is found that the Corporation has breached any of these standards, the Corporation is to do 1 or more of the following:

(a) provide a written or oral apology;

(b) furnish a written explanation;

(c) meet with the worker or employer to consider his or her views and to achieve a resolution of the matter;

(d) furnish information to the worker or the employer, in an appropriate form, which outlines, where relevant—

(i) the status of any claim and extent of entitlements; and

(ii) the review rights that exist under this Act; and

(iii) the services that are available and the timeframes that should apply in relation to a dispute;

(e) provide a worker with a copy of his or her file in accordance with section 180 of this Act or under the *Freedom of Information Act 1991*;

(f) invite feedback about any response and ensure that any questions are answered or requests are responded to in an appropriate manner;

(g) take any other reasonable steps to remedy the matter.

Part 4—Wider issues

8—Wider issues

The Corporation will consider and address the wider implications associated with the operation and effectiveness of these standards and any complaints that arise under them by—

(a) monitoring and analysing issues that arise from the complaints processes; and

(b) identifying and addressing concerns with operational policies and processes; and

(c) informing workers and employers about steps that have been taken under these standards to address their concerns and by taking steps to prevent the recurrence of breaches and complaints.

Schedule 6—Age factor

Worker's age at the relevant date (in years)	Percentage to be applied
25 or less	100%
26	99%
27	98%
28	97%
29	96%
30	95%
31	94%
32	93%
33	92%
34	91%
35	90%
36	89%
37	88%
38	87%
39	86%
40	85%
41	84%
42	83%

Worker's age at the relevant date (in years)	Percentage to be applied
43	82%
44	81%
45	80%
46	78%
47	76%
48	74%
49	72%
50	70%
51	68%
52	66%
53	64%
54	62%
55	60%
56	56%
57	52%
58	48%
59	44%
60	40%
61	36%
62	32%
63	28%
64	24%
65	20%
66	16%
67	12%
68	8%
69	4%
70 or more	0%

Schedule 7—Prescribed sum—economic loss

Degree of whole person impairment	Prescribed sum
5%	$5 000 (indexed)
6%	$7 785 (indexed)
7%	$12 027 (indexed)
8%	$20 296 (indexed)
9%	$30 067 (indexed)
10%	$41 342 (indexed)

Degree of whole person impairment	Prescribed sum
11%	$48 437 (indexed)
12%	$56 105 (indexed)
13%	$63 572 (indexed)
14%	$73 512 (indexed)
15%	$86 453 (indexed)
16%	$95 574 (indexed)
17%	$106 178 (indexed)
18%	$120 643 (indexed)
19%	$135 731 (indexed)
20%	$153 296 (indexed)
21%	$168 781 (indexed)
22%	$186 285 (indexed)
23%	$204 170 (indexed)
24%	$222 389 (indexed)
25%	$242 659 (indexed)
26%	$263 215 (indexed)
27%	$290 602 (indexed)
28%	$318 645 (indexed)
29%	$350 000 (indexed)

Schedule 8—Minimum amounts of compensation according to degree of impairment under regulations

Degree of whole person impairment	Minimum compensation payable under regulations
5% - 9% (inclusive)	$11 800 (indexed)
10% - 29% (inclusive)	$20 768 (indexed)
30% - 49% (inclusive)	$117 668 (indexed)
50% - 100% (inclusive)	$472 000 (indexed)

Schedule 9—Repeal, amendments and transitional provisions

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Repeal

2—Repeal

The *Workers Rehabilitation and Compensation Act 1986* is repealed.

Part 3—Amendment of *Civil Liability Act 1936*

3—Amendment of section 4—Application of Act

Section 4(4)—delete "the *Workers Rehabilitation and Compensation Act 1986*" and substitute:

Part 4 of the *Return to Work Act 2014*

Part 4—Amendment of *Judicial Administration (Auxiliary Appointments and Powers) Act 1988*

4—Amendment of section 2—Interpretation

Section 2, definition of ***judicial office***, (ba)—delete paragraph (ba) and substitute:

(ba) the office of Deputy President of the South Australian Employment Tribunal;

Part 5—Amendment of *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*

5—Amendment of section 24—Eligibility for participation in Scheme

Section 24(5)(b)—delete paragraph (b) and substitute:

(b) a motor vehicle injury that is also a work injury under the *Return to Work Act 2014* (other than to such extent as applies under section 55).

6—Amendment of section 55—Agreements with prescribed authorities

(1) Section 55(1)(a) and (b)—delete paragraphs (a) and (b) and substitute:

(a) who have suffered work injuries under the *Return to Work Act 2014*; and

(b) who, in the opinion of the prescribed authority, would benefit from participating in certain aspects of the Scheme relating to treatment, care and support needs and in having other services (whether under this Act or the *Return to Work Act 2014*) provided by the Authority.

(2) Section 55(2)(b)—delete "under this Act"

(3) Section 55(3)—delete subsection (3) and substitute:

(3) The Authority is authorised to exercise any power or discretion delegated to the Authority under an agreement entered into under this section and contemplated by section 176 of the *Return to Work Act 2014*.

(4) Section 55(4), definition of ***prescribed authority***, (a)—delete paragraph (a) and substitute:

(a) in relation to a person who has suffered a work injury as a worker of a self-insured employer under the *Return to Work Act 2014*—that self-insured employer; and

Part 6—Amendment of *Supreme Court Act 1935*

7—Amendment of section 39—Vexatious proceedings

Section 39(6), definition of ***prescribed court***, (c)—delete paragraph (c) and substitute:

(c) the South Australian Employment Tribunal; and

Part 7—Amendment of *WorkCover Corporation Act 1994*

8—Amendment of long title

Long title—delete "WorkCover Corporation of South Australia" and substitute:

Return to Work Corporation of South Australia

9—Amendment of section 1—Short title

Section 1—delete "*WorkCover Corporation Act 1994*" and substitute:

Return to Work Corporation of South Australia Act 1994

10—Amendment of section 3—Interpretation

Section 3, definition of ***Corporation***—delete the definition and substitute:

Corporation means the Return to Work Corporation of South Australia;

11—Amendment of section 4—Continuation of Corporation

Section 4(1)—delete subsection (1) and substitute:

(1) The *WorkCover Corporation of South Australia* continues as the *Return to Work Corporation of South Australia* (with its principal trading name being *ReturnToWorkSA*).

12—Amendment of section 7—Allowances and expenses

Section 7(2)—delete "*Workers Rehabilitation and Compensation Act 1986*" and substitute:

Return to Work Act 2014

13—Amendment of section 12—Primary objects

(1) Section 12(a) and (b)—delete paragraphs (a) and (b) and substitute:

(a) to ensure that the early intervention, recovery and return to work scheme under the *Return to Work Act 2014* operates in a fair, effective and efficient manner; and

(b) to regulate the activities of service providers that are relevant to the scheme referred to in paragraph (a); and

(2) Section 12—after paragraph (d) insert:

and

(e) to take all reasonable steps to ensure that the scheme mentioned above is fully-funded on a fair basis.

14—Amendment of section 13—Functions

(1) Section 13—delete "*Workers Rehabilitation and Compensation Act 1986*" wherever occurring and substitute, in each case:

Return to Work Act 2014

(2) Section 13(1)(b)—delete "occupational" and substitute:

work

(3) Section 13(1)(c)—delete "rehabilitation" and substitute:

recovery

(4) Section 13(1)(e)—delete "workers rehabilitation and compensation"

(5) Section 13(1)(f)—delete "rehabilitation" and substitute:

recovery, return to work

(6) Section 13(1)(g)—delete "rehabilitation" and substitute:

recovery, return to work

(7) Section 13(1)(h)—delete "occupational" and substitute:

work

(8) Section 13(1)(j)—delete paragraph (j) and substitute:

(j) to devise, promote or approve courses of training in early intervention, recovery and return to work in relation to workers who suffer injuries arising from employment; and

(9) Section 13(1)(k)(i)—delete "occupational" and substitute:

work

(10) Section 13(1)(k)(iii)—delete subparagraph (iii) and substitute:

(iii) workers recovery and return to work in cases involving work-related injuries; or

(11) Section 13(1)(ka)—delete "occupational" and substitute:

work

(12) Section 13(1)(l)(i)—delete "occupational" and substitute:

work

(13) Section 13(1)(l)(ii)—delete subparagraph (ii) and substitute:

(ii) workers recovery and return to work in cases involving work-related injuries; and

15—Amendment of section 14—Powers

(1) Section 14(3)(a)(ii)—delete subparagraph (ii) and substitute:

(ii) to provide recovery/return to work services; or

(2) Section 14(3)(a)(iii)—delete "compensable disabilities" and substitute:

work injuries

(3) Section 14(4)(a)—delete "*Workers Rehabilitation and Compensation Act 1986*" and substitute:

Return to Work Act 2014

(4) Section 14(4)(b)—delete paragraph (b) and substitute:

(b) a contract or arrangement with a person who holds an accreditation, approval or appointment by the Corporation for the provision of recovery/return to work services under Part 3 of the *Return to Work Act 2014*; or

(5) Section 14—after subsection (4a) insert:

(4b) An authorised contract or arrangement cannot confer a power on a private sector body—

(a) to agree to a redemption under Part 4 Division 5 of the *Return to Work Act 2014*; or

(b) to refuse a worker access to material under section 180(3)(c) of the *Return to Work Act 2014*.

16—Amendment of section 14A—Direction of Minister

Section 14A(2)—delete "*Workers Rehabilitation and Compensation Act 1986*" and substitute:

Return to Work Act 2014

17—Amendment of section 16—Committees

Section 16(3)—delete "*Workers Rehabilitation and Compensation Act 1986*" and substitute:

Return to Work Act 2014

18—Amendment of section 17A—Corporation's charter

Section 17A(2)(b)—delete paragraph (b) and substitute:

(b) without limiting paragraph (a)—the steps to be undertaken or the initiatives to be established to ensure that the Corporation has and maintains systems to provide for the effective recovery and return to work of workers who suffer work-related injuries, especially through early intervention and through the administration of section 18 of the *Return to Work Act 2014*;

19—Amendment of section 20—Annual reports

Section 20(2)(b)—delete paragraph (b)

20—Amendment of section 21—Chief Executive Officer

Section 21(7)—delete "*Workers Rehabilitation and Compensation Act 1986*" wherever occurring and substitute, in each case:

Return to Work Act 2014

21—Amendment of section 26—Protection of special names

(1) Section 26(1), definition of ***prescribed name***—delete the definition and substitute:

prescribed name means—

(a) *WorkCover*; or

(b) *ReturnToWorkSA*; or

(c) *RTWSA*; or

(d) *ReturnToWorkAssist*; or

(e) *ReturnToWorkAssistSA*; or

(f) *RTWAssistSA*.

(2) Section 26(2)—delete "the" and substitute:

a

(3) Section 26(3)—delete "the prescribed name" and substitute:

a prescribed name

22—Insertion of section 27A

After section 27 insert:

27A—Application of public corporations provision

(1) Subject to subsections (2) and (3), section 29(2)(a) and (3) of the *Public Corporations Act 1993* applies to the Corporation.

(2) A liability under subsection (1) does not arise in respect of any financial year unless the Corporation has, in relation to the financial year in respect of which the liability is imposed—

(a) achieved a funding level of at least 100% at a probability of sufficiency of 75%; and

(b) achieved a profit from its insurance operations.

(3) A liability under subsection (1) also does not arise in respect of a financial year if the Minister, after consultation with the Treasurer, determines, from a prudential perspective, that such a liability should not be imposed in respect of that financial year.

(4) Terms used in this section and also in Part 10 of the *Return to Work Act 2014* have the same meanings in this section as they have in that Part (unless the contrary intention appears).

Part 8—Amendment of *Workers Rehabilitation and Compensation Act 1986*

23—Amendment of section 31—Evidentiary provision

(1) Section 31(2b)(b), (c) and (d)—delete paragraphs (b), (c) and (d) and substitute:

(b) the worker was a member of the South Australian Country Fire Service (***SACFS***) presumptively employed by the Crown as a firefighter—

(i) on or after 1 July 2013; and

(ii) before the injury occurred; and

(iii) for the qualifying period referred to in the second column of Schedule 2A opposite the injury; and

(c) the injury occurred—

(i) on or after 1 July 2013; and

(ii) in the case of a worker who is no longer a member of SACFS presumptively employed by the Crown as a firefighter—no more than 10 years after the cessation of that presumptive employment; and

(d) during the qualifying period referred to in paragraph (b)(iii), the worker was exposed to the hazards of a fire scene (including exposure to a hazard of the fire that occurred away from the scene),

(2) Section 31(4a)—delete "subsection (2a)" and substitute:

subsections (2a) and (2b)

(3) Section 31(4b)—delete subsection (4b)

Part 9—Amendment of *Work Health and Safety Act 2012*

24—Amendment of section 4—Definitions

(1) Section 4—after the definition ***reasonably practicable*** insert:

RTWSA means the Return to Work Corporation of South Australia;

(2) Section 4, definition of ***WorkCover***—delete the definition

25—Amendment of Schedule 2—Local tripartite consultation arrangements

Schedule 2, clause 13(1)—delete "Schedule 1 of the *Workers Rehabilitation and Compensation Act 1986*" and substitute:

Schedule 9 of the *Return to Work Act 2014*

26—Amendment of Schedule 5—Provisions of local application

(1) Schedule 5, clause 1(1)—delete "WorkCover" wherever occurring and substitute, in each case:

RTWSA

(2) Schedule 5, clause 1(2)—delete "section 112 of the *Workers Rehabilitation and Compensation Act 1986*" and substitute:

section 185 of the *Return to Work Act 2014*

(3) Schedule 5, clause 1(3)—delete subclause (3) and substitute:

(3) In this clause—

related Act means—

(a) the *Return to Work Act 2014*; or

(b) the *Return to Work Corporation of South Australia Act 1994*.

(4) Schedule 5, clause 2—delete "*Workers Rehabilitation and Compensation Act 1986*" wherever occurring and substitute, in each case:

Return to Work Act 2014

(5) Schedule 5, clause 2—delete "WorkCover" wherever occurring and substitute, in each case:

RTWSA

(6) Schedule 5, clause 2(6)(c)—delete "section 67" and substitute:

section 139

(7) Schedule 5, clause 2(6)(c)—delete "levy" and substitute:

premium

(8) Schedule 5, clause 2(7)—after "the Treasurer" insert:

to be applied towards the costs associated with the administration of this Act

(9) Schedule 5, clause 2(11)—delete "unpaid levy under Part 5" and substitute:

unpaid premium under Part 9

(10) Schedule 5, clause 3—delete clause 3

Part 10—Transitional provisions

Division 1—Interpretation

27—Interpretation

(1) In this Part—

designated day means a day appointed by proclamation as the designated day for the purposes of the provision in which the term is used;

existing injury—see clause 29(1)(a);

new injury—see clause 29(1)(b);

SAET means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*;

WCT means the *Workers Compensation Tribunal* under the repealed Act.

(2) A reference in this Part to the Corporation in a clause prescribed by regulations made for the purposes of this subclause will be taken to include a reference to a self-insured employer.

Division 2—CPI adjustment

28—CPI adjustment

(1) If a sum of money fixed by this Act at the time of enactment is followed by the word "(indexed)", that signifies—

(a) that the amount is to be adjusted as at 1 January 2015 so that the adjusted sum bears to the amount fixed by Parliament the same proportion as the Consumer Price Index for the September quarter 2014 bears to the Consumer Price Index for the September quarter 2013; and

(b) that the amount is to be adjusted as at 1 January in each subsequent year so that the adjusted sum bears to the amount fixed by the Parliament the same proportion as the Consumer Price Index for the September quarter of the immediately preceding financial year bears to the Consumer Price Index for the September quarter 2013.

(2) An amount determined under subclause (1) will be rounded up to the nearest dollar.

(3) Subclauses (1) and (2) apply to a sum fixed by a provision that has not come into operation on 1 January 2015 so that when the provision comes into operation then the sum as adjusted will apply.

Division 3—Application of Act

29—General provision

(1) Subject to the other provisions of this Part, this Act applies to and in relation to—

(a) an injury that is attributable to a trauma that occurred before the designated day and that is a compensable injury under the repealed Act (an ***existing injury***); and

(b) an injury that is attributable to a trauma that occurred on or after the designated day (a ***new injury***).

(2) For the purposes of subclause (1), an injury that is partially attributable to a trauma that occurred before the designated day and partially attributable to a trauma that occurred on or after the designated day will be taken to be a new injury within the ambit of subclause (1)(b).

(3) Subject to the other provisions of this Part—

(a) a reference in this Act to a work injury will be taken to include a reference to a compensable injury under the repealed Act; and

(b) this Act will apply to a compensable injury under the repealed Act as if this Act had been in operation before the injury occurred.

(4) Nothing in this Part is intended to give rise to an entitlement under this Act and the repealed Act so as to give rise to double entitlements.

30—Connection with employment

(1) The question about whether an existing injury is compensable will be determined under sections 30 and 30A of the repealed Act (as in existence immediately before the designated day).

(2) However, section 7(3) of this Act extends to an injury (the ***designated injury***) that is, or results from, the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior injury where—

(a) the prior injury is wholly or partially attributable to a trauma that occurred before the designated day; and

(b) the designated injury is wholly or partially attributable to a trauma that occurred on or after the designated day.

31—Notice of injury

A notice of an injury given by a worker under section 51 of the repealed Act will be taken to be a notice given under section 16 of this Act.

32—Employer's duty to provide work

Section 18(3) of this Act extends to a worker who has been incapacitated for work before the designated day.

33—Recovery and return to work

(1) A rehabilitation program in force under the repealed Act immediately before the designated day will continue for the purposes of this Act in connection with providing recovery/return to work services until reviewed or discontinued by the Corporation.

(2) A rehabilitation and return to work plan in force under the repealed Act immediately before the designated day will, on the designated day, be taken to be a recovery/return to work plan under this Act.

(3) A person who, immediately before the designated day, held an appointment as a co-ordinator under section 28D of the repealed Act will, on the designated day, be taken to be an accredited return to work co-ordinator under section 26 of this Act.

(4) A reference in any instrument or agreement to a rehabilitation and return to work co-ordinator will, on the designated day, be taken to be a reference to a return to work co-ordinator under section 26 of this Act (unless the context otherwise requires).

34—Seriously injured workers

(1) A person whose degree of whole person impairment has been assessed under Part 4 Division 5 of the repealed Act to be 30% or more will be taken to be a seriously injured worker under this Act.

(2) In addition, the Corporation may determine that a worker who has an existing injury will be taken to be a seriously injured worker for the purposes of this Act.

(3) A determination under subclause (2)—

(a) may be made on any basis determined by the Corporation (including in a case where the worker would not qualify to be a seriously injured worker under section 21 of this Act); and

(b) will have effect according to its terms.

(4) A decision to make, or not to make, a determination under subclause (2) is not reviewable under this Act.

35—Medical expenses

(1) In relation to the application of subsection (20) of section 33 of this Act to an existing injury, a period of 12 months referred to in that subsection must be a period of 12 months—

(a) that runs from the designated day; or

(b) that commences on or after the designated day,

(and so, in the case of an existing injury, a reference in subsection (21) of section 33 of this Act to the period referred to in subsection (20) will be taken to be a reference to a period applying under paragraph (a) or (b) of this clause).

(2) Section 33(21)(b)(ii) of this Act does not apply in relation to an existing injury.

36—Provisional liability for medical expenses

A right of set off under section 32A(8) of the repealed Act may be exercised in relation to a right to the payment of compensation under this Act (including in relation to a new injury).

37—Weekly payments for workers

(1) In this clause—

(a) the ***first transitional period*** is the period of 52 weeks from the designated day; and

(b) the ***second transitional period*** is the period of 52 weeks beginning immediately after the end of the initial transitional period; and

(c) a reference to an entitlement period is a reference to an entitlement period under Part 4 Division 4 of the repealed Act; and

(d) a Category A worker is, in respect of an existing injury, a worker who, immediately before the designated day, was still entitled to receive a weekly payment during the first entitlement period in respect of any incapacity for work in respect of that injury; and

(e) a Category B worker is, in respect of an existing injury, a worker who, immediately before the designated day, was still entitled to receive a weekly payment during the second entitlement period in respect of any incapacity for work in respect of that injury; and

(f) a Category C worker is, in respect of an existing injury, a worker who, immediately before the designated day, was still entitled to receive a weekly payment during a period occurring after the end of the second entitlement period in respect of any incapacity for work in respect of that injury.

(2) Subject to this Part, a worker who, in respect of an existing injury, is incapacitated for work at any time during the period beginning on the designated day and ending 104 weeks from the designated day, will be entitled to weekly payments in respect of that incapacity in accordance with the following principles:

(a) if any incapacity for work occurs within the first transitional period—

(i) in the case of a Category A worker—the worker is entitled to weekly payments under section 39(1)(a)(i) or (ii) of this Act as if references to the first designated period in section 39(1)(a) were references to the first transitional period; and

(ii) in the case of a Category B worker—the worker is entitled to weekly payments under section 39(1)(b)(i) or (ii) as if references to the second designated period in section 39(1)(b) were references to the first transitional period and as if references to "80%" in section 39(1)(b)(i) or (ii) were substituted with "90%"; and

(iii) in the case of a Category C worker—the worker is entitled to weekly payments under section 39(1)(b)(i) or (ii) of this Act as if references to the second designated period in section 39(1)(b) were references to the first transitional period;

(b) if any incapacity for work occurs within the second transitional period—the worker is entitled to weekly payments under section 39(1)(b)(i) or (ii) of this Act as if references to the second designated period in section 39(1)(b) were references to the second transitional period.

(3) Subject to subclauses (4) and (5), a worker has no entitlement to weekly payments under this Act or the repealed Act in respect of an existing injury after the end of the second transitional period (and this subclause will apply instead of section 39(3) of this Act in relation to existing injuries).

(4) An entitlement under this clause has effect subject to any other provision of this Act (including any provision that applies under or subject to this Part) that provides for the suspension, reduction or discontinuance of weekly payments.

(5) Subclause (3) does not apply in relation to a seriously injured worker.

(6) To avoid doubt, a person who, before the designated day, has ceased to have an entitlement to weekly payments on account of a discontinuance under section 36 of the repealed Act is not entitled to weekly payments under this clause (or under the repealed Act).

38—Federal minimum wage safety net

Section 42 of this Act extends to the amount of compensation payable under Part 4 Division 4 Subdivision 2 of this Act on account of the operation of this Part.

39—Management of transitional arrangements for income support

(1) The Corporation may, in connection with the operation of clauses 37 and 38 (and the other relevant provisions of this Part), establish a scheme to provide for the transition from making weekly payments under the repealed Act to making weekly payments in accordance with those clauses and this Act more generally.

(2) To the extent that the Corporation, in establishing and implementing the scheme referred to in subclause (1), does not begin to make weekly payments to a worker at the rates that apply under this Act rather than the repealed Act on the designated day, the worker will, when weekly payments commence in accordance with the provisions of this Part, be entitled to—

(a) back payments to the extent necessary to ensure that the worker receives (in due course) his or her full entitlement (as applying from the designated day); and

(b) the payment of interest (at the prescribed rate) calculated and applied (from the designated day) in accordance with the regulations.

40—Retirement age

To avoid doubt, section 44 of this Act extends to weekly payments being paid to a worker under this Part.

41—Discontinuance of weekly payments

(1) Subsection (9) of section 48 of this Act extends to and in relation to a notice of a decision of the Corporation under section 36 of the repealed Act unless the worker has lodged a notice of dispute under section 36 of the repealed Act before the designated day (but subject to the operation of subclause (2)(b)).

(2) If a worker has lodged a notice of dispute under section 36 of the repealed Act before the designated day—

(a) if the worker has made an application to the WorkCover Ombudsman under subsection (15) of section 36 of the repealed Act and the WorkCover Ombudsman has made a decision in relation to the application before the designated day—subsections (15), (16) and (17) of section 36 of the repealed Act, and all other relevant provisions of the repealed Act, will continue to apply to and in relation to the matter until the dispute is finally resolved as if the repealed Act had not been repealed by this Act; and

(b) in any other case—any application to the WorkCover Ombudsman under subsection (15) of section 36 of the repealed Act (if made) will lapse, but the worker may make an election under subsection (9) of section 48 of this Act.

(3) In the case of a worker within the ambit of subclause (2)(b)—

(a) the election must be made within 28 days after the designated day; and

(b) if the worker makes an election—

(i) if the dispute has already come before a conciliator—the Tribunal may act (if it thinks fit) under subsection (9)(b) of section 48 of this Act so as to provide for the reinstatement of weekly payments; and

(ii) the liability of the Corporation to make a payment for any weekly payments that have not been made will be limited to a period commencing on the date of the election.

(4) Subclause (3) operates subject to section 48(10) of this Act.

42—Redemptions

(1) Nothing in this Part affects the application of section 42 of the repealed Act with respect to negotiations, and any agreement, for a redemption under the repealed Act commenced or entered into in accordance with that section before the designated day.

(2) Except as provided by subclause (1) (and to avoid doubt), section 42 of the repealed Act will not apply to or in relation to a liability under the repealed Act with respect to an existing injury.

43—Loss of future earning capacity

To avoid doubt, Part 4 Division 6 of this Act does not apply to or in relation to an existing injury.

44—Permanent impairment assessment

A person whose entitlement for non-economic loss has been determined under Part 4 Division 5 of the repealed Act in respect of an existing injury is not entitled to an assessment under Part 2 Division 5 of this Act in relation to the same injury (or any other injury arising from the same trauma).

45—Payments on death—lump sums

(1) The Corporation may, in relation to the death of a worker occurring on or after 1 July 2008 and before the designated day, in its absolute discretion, on the application of a person who was the spouse or domestic partner of the worker at the time of death, make an *ex gratia* payment (of an amount determined by the Corporation) after taking into account the amount (or additional amount) that would have been payable under section 61 of this Act had this Act been in operation before that trauma.

(2) The Corporation may make a payment under subclause (1) even if an amount has been paid under section 45A of the repealed Act in relation to the death of the worker (including an amount equal to the prescribed sum under that section).

(3) The Corporation may, in relation to the death of a worker that is subject to a claim for compensation under section 45A of the repealed Act that has not been determined before the designated day (including by the resolution of any dispute by proceedings under the repealed Act), deal with the claim in all respects under section 61 of this Act.

(4) A decision of the Corporation not to make a payment under subclause (1) (or the amount of any such payment) is not reviewable under this Act (or under the repealed Act).

46—Incidence of liability

Section 64(3) and (4) of this Act extends to outstanding payments of compensation under the repealed Act.

47—Payments by employers

(1) The Corporation may, if it thinks fit, on the application of an employer who has paid compensation by way of income maintenance under the repealed Act, being compensation that would otherwise have been payable by the Corporation, make a payment that would have been payable under subsection (17) of section 64 of this Act had subsections (16) and (17) of that section been in operation at the time of the payment by the employer.

(2) An application under subclause (1) must be made within 3 months after the designated day.

48—Provisional payments

A right of set off under section 50H of the repealed Act may be exercised in relation to a right to the payment of compensation under this Act (including in relation to a new injury).

Division 4—Common law

49—Common law

Part 5 of this Act does not apply to or in relation to an existing injury or the death of a worker resulting from an existing injury (and section 54(1) of the repealed Act will continue to apply in respect of such an injury or death).

Division 5—Dispute resolution

50—Existing proceedings etc

(1) Subject to this Part, an application or other proceedings commenced before WCT under the repealed Act before the designated day may be continued and completed (and any appeals initiated or completed) under the repealed Act (and, if relevant, after applying any provision of this Part that is relevant to the proceedings).

(2) A right to make an application or to bring proceedings before WCT under the repealed Act in existence before the designated day and not exercised before that day will be exercised as if Part 6 of this Act were in operation before that right arose so that the relevant proceedings will be commenced before SAET rather than WCT.

(3) Without limiting any other provision—

(a) the regulations may make provision for or with respect to the interaction between this Part and the repealed Act in order to ensure that SAET and WCT can operate under both sets of provisions (including, if necessary, by modifying any provision of the repealed Act or section 7 of this Act so that SAET can exercise the jurisdiction conferred by subclause (2)); and

(b) the President of SAET may take other steps to ensure the smoothest possible transition from 1 jurisdiction to the other in connection with the operation of this clause (including by giving directions as to any procedural matter which will then have effect according to their terms).

51—Adoption of WCT decisions

SAET may—

(a) draw any conclusions of fact from evidence that has been before WCT; or

(b) adopt any findings or determinations of WCT; or

(c) adopt any decision, direction or order of WCT; or

(d) set aside any decision, direction or order of WCT,

that may be relevant to proceedings before SAET.

52—Dissolution of WCT

(1) The Governor may, when he or she thinks that it is appropriate to do so, by proclamation, dissolve WCT.

(2) When a proclamation is made under subclause (1)—

(a) subject to subclause (3), any member of WCT (being either a presidential member or a conciliation officer) holding office under the repealed Act at the time of the making of the proclamation will cease to hold that office and any contract, agreement or arrangement relating to that office held by the member is terminated by force of this paragraph at the same time (and no right of action will arise against the Minister or the State on account of that termination); and

(b) any proceedings before the WCT will be dealt with in accordance with provisions made by the regulations.

(3) A member of WCT who is a Judge of the Industrial Relations Court of South Australia will continue as a member of SAET under the provisions of the South Australian Employment Tribunal Act 2014.

Division 6—Registration and funding

53—Continuation of registration

(1) An employer registered under the repealed Act immediately before the designated day will be taken to be registered under this Act (and, in the case of a self-insured employer under the repealed Act the employer will continue as a self-insured employer under this Act).

(2) A registration under this Act under subclause (1) is subject to any conditions specified by this Act and is subject to the other provisions of this Act in all respects.

54—Premiums and payments

(1) Section 137 of this Act does not apply in relation to the 2015/2016 or 2016/2017 financial years.

(2) A RTWSA premium order under this Act may take into account the claims experience of any employer under the repealed Act.

(3) A hindsight premium under the repealed Act is payable as if the relevant period applied under this Act (and will be payable by a date specified by the Corporation).

(4) Unless otherwise determined by the Corporation, a group constituted under section 72A of the repealed Act will continue as a group under section 145 of this Act.

(5) In acting under section 147 of this Act, the Corporation may have regard to matters that arose during the time that the repealed Act was in operation.

(6) Any right of recovery, fine, penalty or other step that may be exercised, imposed, taken or enforced under Part 5 of the repealed Act in relation to any assessment, default or failure may, on and from the designated day, be exercised, imposed, taken or enforced under Part 9 of this Act.

(7) Without limiting subclause (6), the Corporation may exercise any power or do any thing in relation to a matter under Part 5 of the repealed Act as if this Act had been in operation at the time that the matter under Part 5 of the repealed Act arose.

55—Scheme reviews

(1) A reference in Part 10 of this Act to a financial year is a reference to a financial year commencing on or after the designated day.

(2) In addition, the Minister cannot initiate a review under section 170 of this Act until after the expiration of 3 financial years from the designated day.

Division 7—Medical Panels

56—Medical Panels

(1) If a Medical Panel is, immediately before the designated day, still considering a medical question on a reference under Part 6C of the repealed Act—

(a) the Medical Panel must give its opinion as quickly as is reasonably practicable after the designated day; and

(b) in any event the reference will, subject to subclause (2), be brought to an end, by operation of this clause, 60 days after the designated day (even if the Medical Panel has not given its opinion on the relevant medical question by then and even if a longer period would otherwise apply due to an extension of time under section 98H(1) of the repealed Act).

(2) WCT may grant an extension of the period that applies under subclause (1)(b).

(3) WCT may grant an extension of time under subclause (2) on such conditions as it thinks fit.

(4) The costs of Medical Panels will be payable out of the Compensation Fund until the Medical Panels cease operations in all respects.

Division 8—WorkCover Ombudsman

57—WorkCover Ombudsman

The person holding office as the WorkCover Ombudsman immediately before the designated day will, on the designated day, cease to hold office and any contract, agreement or arrangement relating to the office is terminated by force of this clause at the same time (and no right of action will arise against the Minister or the State on account of that termination).

Division 9—1971/1986 Acts

58—Interpretation

In this Division—

appointed day means the day on which the 1971 Act was repealed by the *Workers Rehabilitation and Compensation Act 1986*;

compensating authority means the Corporation or a self-insured employer;

1971 Act means the *Workers Compensation Act 1971*.

59—Application of 1971 Act

(1) Subject to this clause, the 1971 Act continues to apply in respect of an injury that is attributable to a trauma that occurred before the appointed day.

(2) This Act applies in relation to an injury (referred to in this clause as a ***transitional injury***) that is partially attributable to a trauma that occurred before the appointed day and partially attributable to a trauma that occurred on or after the appointed day, but does not affect rights (referred to in this clause as ***antecedent rights***) that had accrued before the appointed day in respect of a transitional injury.

(3) The following provisions apply in relation to a transitional injury:

(a) where a compensating authority pays or is liable to pay compensation to a claimant under this Act in relation to a transitional injury, the compensating authority is subrogated, to an appropriate extent, to the antecedent rights of the claimant;

(b) where the claimant has received, in pursuance of antecedent rights, damages or compensation (not being weekly payments for a period of incapacity that concluded before the appointed day), there will be an appropriate reduction in the amount of compensation payable under this Act in respect of the injury;

(c) the extent of a subrogation under paragraph (a), or a reduction in the amount of compensation under paragraph (b), will be determined having regard to—

(i) the amount of the compensation payable (apart from this subclause) under this Act in respect of the transitional injury; and

(ii) the extent to which the transitional injury is attributable to a trauma that occurred before the appointed day; and

(iii) any other relevant factors.

(4) Where a compensating authority—

(a) pays compensation to a claimant under this Act; and

(b) becomes entitled to recover a proportion of the payment from an employer by virtue of subrogation to the rights of the claimant under subclause (3)(a); and

(c) notifies that employer in writing of the payment,

the amount recoverable from the employer will be increased by interest at the prescribed rate as from the date of the notification.

(5) The Corporation will, in the first instance, make a determination of—

(a) the extent of a subrogation under subclause (3)(a) or a reduction in the amount of compensation under subclause (3)(b); and

(b) the amount of any consequential liability.

(6) Before making such a determination the Corporation must allow any person whose interests may be affected by the determination a reasonable opportunity to make representations to the Corporation on the subject matter of the determination and when the determination is made the Corporation must give written notification of the terms of the determination to every person whose interests are affected by it.

(7) Any such person may, by written notice served personally or by post on the Corporation within 1 month after receiving notice of the determination or such longer period as the Corporation may allow, dispute the determination.

(8) Any such dispute may be referred on the application of any party affected by the determination to SAET.

(9) Where a dispute is so referred, SAET will review the Corporation's determination and may confirm, vary or revoke it.

(10) Subject to the regulations, a determination by the Corporation under this clause may be enforced in the same way as a decision of SAET.

(11) A determination by the Corporation may be enforced notwithstanding that it is disputed, but if it appears from the result of a review that a compensating authority has recovered an amount in pursuance of the determination to which the compensating authority is not entitled, that amount must be repaid together with interest at the prescribed rate.

60—Mining and Quarrying Industries Fund

(1) The scheme established under Part 9 of the 1971 Act continues in existence for the settlement of claims and other matters arising in relation to death or disablement from silicosis suffered before the appointed day except that the Corporation will be liable to satisfy any claim made under the scheme.

(2) The money held by the Corporation in connection with the operation of subclause (1) must be held in a special account entitled the *Mining and Quarrying Industries Fund*.

(3) The Mining and Quarrying Industries Fund is to be notionally divided into 2 parts (Part A and Part B), 1 part (Part A) to be available to the Corporation to satisfy its liabilities under subclause (1) and the balance (Part B) to be available to the Mining and Quarrying Occupational Health and Safety Committee under Schedule 2 of the *Work Health and Safety Act 2012* for the purposes referred to in that Schedule.

(4) For the purposes of the division of the Mining and Quarrying Industries Fund into 2 parts—

(a) the Corporation must at 3 yearly intervals arrange for an actuary to estimate the extent of the Corporation's existing and prospective liabilities under subclause (1) at that date; and

(b) —

(i) if it appears from any such estimate that the amount standing to the credit of Part A exceeds the amount required to satisfy the Corporation's liabilities under subclause (1), the amount of the excess must be transferred from Part A to Part B;

(ii) if it appears from any such estimate that the amount standing to the credit of Part A is less than the amount required to satisfy the Corporation's liabilities under subclause (1), the amount required to make up the deficiency must be transferred from Part B to Part A.

(5) The Corporation must keep separate accounting records for Parts A and B.

(6) Money standing to the credit of the Mining and Quarrying Industries Fund (and not immediately required for the purposes of the fund) may be invested as if it were part of the Compensation Fund.

(7) Income and accretions produced by the investment of the money must be shared between Parts A and B (the amount of the shares being determined according to the extent to which money held on each account has contributed to the amount invested).

(8) The Corporation may debit the Mining and Quarrying Industries Fund with the reasonable costs of administering the fund.

61—Statutory Reserve Fund

(1) The Statutory Reserve Fund (referred to in section 118c of the 1971 Act) must continue to be held as a separate part of the Compensation Fund.

(2) Division 4 of Part 10A (ie sections 118d to 118e) of the 1971 Act, and related interpretative provisions, continue in force subject to the following modifications:

(a) references to the Commission are to be read as references to the Corporation;

(b) references to the fund are to be read as references to the Statutory Reserve Fund held under subclause (1);

(c) references to the Treasurer are to be read as references to the Corporation;

(d) references to the Court are to be read as references to SAET;

(e) section 118d(10) is modified to read as follows:

(10) On an appeal under this section, SAET has power to review all aspects of the Corporation's determination.;

(f) after section 118d(12) subsections are inserted in the following terms:

(13) Any amounts recovered by the Corporation in the exercise of rights to which it is subrogated under subsection (12) must be paid into the fund.

(14) A claim made under this section before the date of transition that had not been disposed of at the date of transition (a ***pre-transition claim***), is taken to have been made against the Corporation as if this section had been in force in its modified form when the claim was made and it was then made against the Corporation.

(15) It follows that the Corporation assumes responsibility for administering pre-transition claims and is substituted for the Commission or the Treasurer (as the case requires) in any legal proceedings relating to such claims.

(16) Any rights of subrogation that existed in favour of the Treasurer immediately before the date of transition are transferred to the Corporation.

(17) The Corporation may recoup administrative expenses and legal costs related to claims under this section from the fund.

(18) The Corporation may intervene and be heard in proceedings before a court if there is a prospect that a claim before the court, or a judgment of the court, may lead to a claim under this section.

(19) In this section—

date of transition means the date on which the *Workers Rehabilitation and Compensation (SGIC) Amendment Act 1996* came into operation.

62—Insurance Assistance Fund

(1) The Insurance Assistance Fund must continue to be held as a separate part of the Compensation Fund.

(2) The Governor may, by proclamation, transfer rights and liabilities of the insurer under a section 118g policy from the Motor Accident Commission to the Corporation.

(3) The Motor Accident Commission may delegate to the Corporation its responsibility for administering claims under section 118g policies.

(4) The Corporation may, by an authorised contract or arrangement—

(a) delegate its responsibility for administering claims under section 118g policies in relation to which the rights and liabilities of the insurer have been transferred to the Corporation under subclause (2); or

(b) subdelegate a responsibility for administering claims under section 118g policies delegated to it under subclause (3).

(5) The Motor Accident Commission or the Corporation (as the case requires) may recoup expenditure covering liabilities under section 118g policies and associated administrative and legal costs (other than expenditure and costs covered by a contract of reinsurance) from the Insurance Assistance Fund and, if that proves insufficient, from the Statutory Reserve Fund.

(6) In this clause—

authorised contract or arrangement means a contract or arrangement authorised by regulation under section 14 of the *WorkCover Corporation Act 1994*;

section 118g policy means a policy of insurance issued under section 118g(3) of the 1971 Act.

63—Management of funds

(1) The Statutory Reserve Fund and the Insurance Assistance Fund may be invested in common with the Compensation Fund as if they formed part of the Compensation Fund.

(2) For the purposes of financial reporting and actuarial valuations, the Statutory Reserve Fund and the Insurance Assistance Fund will be taken to form part of the Compensation Fund.

(3) If the Corporation is of the opinion that the balance of the Statutory Reserve Fund or the Insurance Assistance Fund exceeds the amount reasonably required for the purposes for which the relevant fund exists, the Corporation may, with the Minister's consent, transfer the surplus to the Compensation Fund.

64—Entitlement to documents

The Corporation is entitled to possession of all documents and other materials in the possession or power of the Motor Accident Commission relevant to claims against the Statutory Reserve Fund or to liabilities under policies of insurance transferred to the Corporation in connection with the scheme continued under this Schedule.

65—Loss of earning capacity—capital loss assessments

(1) Division 4B of Part 4 of the repealed Act, as in existence immediately before the designated day, will be taken to continue to apply with respect to any case where the Corporation or a self-insured employer has made any assessment (including an interim assessment) under section 42A of the repealed Act before the designated day.

(2) If a worker to whom subclause (1) applies has not, immediately before the commencement of this clause, received a final assessment of loss under the Division of the repealed Act referred to in subclause (1), any further assessment under that Division will be made on the basis that the worker is taken to be a seriously injured worker for the purposes of the assessment.

Division 10—Work health and safety administration costs

66—Work health and safety administration costs

(1) In this clause—

WHS Act means the *Work Health and Safety Act 2012*.

(2) The prescribed percentage of the prescribed amount under Schedule 5, clause 2(7) and (8) of the WHS Act (as amended by this Act) for the 2015/2016 financial year must be at least equal to the total of the prescribed percentage of the prescribed amount under Schedule 5, clause 2(7) and (8) of the WHS Act for the 2014/2015 financial year and the amount payable under Schedule 5, clause 3 of the WHS Act for the 2014/2015 financial year (and if a regulation is not made under Schedule 5, clause 2(7) or (8) of the WHS Act (as amended by this Act) for the 2015/2016 financial year then the total amount described in this subclause will apply under that clause).

Division 11—Renewal of authorised contracts

67—Renewal of authorised contracts

Section 14(4a)(a) of the *WorkCover Corporation Act 1994* does not apply to a regulation under section 14(4)(d) of that Act that is expressed to come into operation on 1 July 2015.

Division 12—Review of provisions relating to firefighters

68—Review

(1) In addition to causing a review of this Act to be conducted as required under section 203, the Minister must, as soon as possible after 1 July 2018, appoint a person to carry out a review concerning the operation and impact of—

(a) the amendments to the *Workers Rehabilitation and Compensation Act 1986* made by the *Workers Rehabilitation and Compensation (Firefighters) Amendment Act 2013* and Part 8 of this Schedule; and

(b) Schedule 3 of this Act.

(2) The person appointed by the Minister under subclause (1) must present to the Minister a report on the outcome of the review no later than 4 months following his or her appointment.

(3) The Minister must, within 6 sitting days after receiving the report, have copies of the report laid before both Houses of Parliament.

Division 13—Regulations

69—Additional transitional provisions—regulations

(1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.

(2) A provision of a regulation made under subclause (1) may, if the regulations so provide, take effect from the commencement of this Act or from a later day.

(3) To the extent that a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a worker by decreasing a right that existed immediately before that date of publication in the Gazette.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2014	16	*Return to Work Act 2014*	6.11.2014	Sch 9 (Pt 8)—1.7.2013: s 2(2); ss 1—3, 4(1)—(7), (14)—(16), 6, 22(16)—(18), 118—120, 126, 127, 135(1), 135(3)(d), (f), (g), Pt 11 (ss 171—174), ss 185, 194, 195, 196(1)(d), (2), (3), 202 & Sch 9 (cl 69)—4.12.2014 (*Gazette 4.12.2014 p6610*); Sch 9 (cl 28)—1.1.2015: s 2(3); ss 10—12, 16(8), 22(3)—(5), 24(5), 26(5)(c), 28(1), (2), 30(1)(a), (c), 33(2)(i), (8), (12)(a), (13)—(15), 45(2), (3), (8), 46(2), (4), (8), 47(2), (3)(a)(ii), (4), 51(2), 63(3), 64(16), (17)(a), 129(5)(d), 131(1)(a), 132, 136, 138, 139(1), 140—143, 145, 146, 147(5), Pt 9 Div 7, ss 165(1), (2), (7) & Sch 9 (cll 8—11, 21, 24, 26(1), (5), 27(2), 34(2)—(4), 54(2), (4), 66 & 67)—2.2.2015; remainder of Act—1.7.2015 (*Gazette 4.12.2014 p6610*)
2020	40	*Training and Skills Development (Miscellaneous) Amendment Act 2020*	19.11.2020	Sch 1 (cl 8)—uncommenced